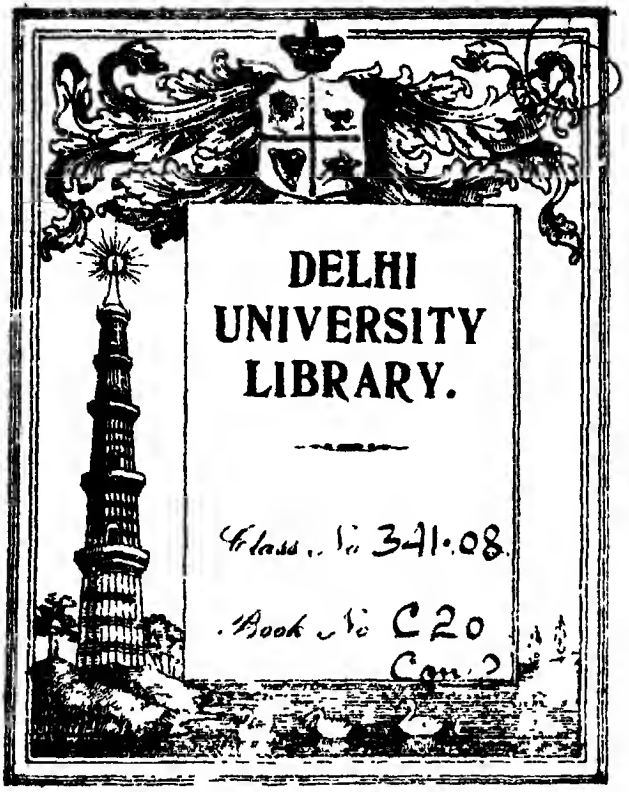
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Publications of the
Carnegie Endowment for International Peace
Division of International Law
Washington

Acting under the appointment of Professor Edwin D. Dickinson, Director of the Second Conference of Teachers of International Law and Related Subjects, and exercising the functions so delegated, the Drafting Committee has edited the stenographic report of the proceedings and the resolutions adopted by the Conference and delivered them to the Secretary of the Carnegie Endowment for International Peace in order that they may be printed and distributed through the Endowment.

ELLERY C. STOWELL, *Chairman.*
CHARLES E. HILL.
HERBERT F. WRIGHT.

WASHINGTON, D. C.,
January 9, 1926.

PROCEEDINGS

OF THE

SECOND CONFERENCE OF TEACHERS

OF

INTERNATIONAL LAW AND RELATED SUBJECTS

HELD IN WASHINGTON, D. C.
APRIL 23-25, 1925

WASHINGTON
CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE
1926

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TABLE OF CONTENTS

LUNCHEON CONFERENCE

FINAL SESSION

MEMBERS OF THE SECOND CONFERENCE OF TEACHERS OF INTERNATIONAL LAW AND RELATED SUBJECTS AND THE INSTITUTIONS REPRESENTED

EDWIN D. DICKINSON, University of Michigan Law School, *Director of the Conference*

ALLEN, FREEMAN H. . . . . Colgate University
ALLIN, CEPHAS D. . . . . University of Minnesota
ANDREWS, ARTHUR I. . . . . Tufts College
BINGHAM, JOSEPH W. . . . . Stanford University Law School
BLAKESLEE, GEORGE H. . . . . Clark College
BORCHARD, EDWIN M. . . . . Yale University Law School
BROWN, PHILIP M. . . . . Princeton University
BURDICK, CHARLES K. . . . . Cornell University College of Law
CALLAHAN, JAMES M. . . . . West Virginia University
CATLIN, GEORGE E. C. G. . . . . Cornell University
CHRISTOL, CARL. . . . . University of South Dakota
CHUBB, HERMAN B. . . . . University of Kansas
COLEGROVE, KENNETH . . . . . Northwestern University
CORNELL, R. F. . . . . Kalamazoo College
DEBEL, NIELS H. . . . . Goucher College
DUNCAN, DAVID SHAW . . . . . University of Denver
EAGLETON, CLYDE . . . . . New York University
ELLIS, ELLEN DEBORAH . . . . . Mount Holyoke College
FENWICK, CHARLES G. . . . . Bryn Mawr College
FITE, EMERSON D. . . . . Vassar College
GARNER, JAMES W. . . . . University of Illinois
GEISER, KARL F. . . . . Oberlin College
HARLEY, J. EUGENE . . . . . University of Southern California
HARRIMAN, EDWARD A. . . . . George Washington University Law School
[1] HART, ALBERT BUSHNELL. . . . . Harvard University
HEALY, THOMAS H. . . . . Georgetown School of Foreign Service
HERRIOTT, F. I. . . . . Drake University
HERSHEY, AMOS S. . . . . Indiana University
HILL, CHARLES E. . . . . George Washington University
HINCKLEY, FRANK E. . . . . University of California
HODGES, CHARLES. . . . . New York University
HUDSON, MANLEY O. . . . . Harvard Law School

[1] Invited to participate by the Conference.

HULL, WILLIAM I.	Swarthmore College
JESSUP, PHILIP C.	Columbia University
JOHNSON, C. O.	University of North Dakota
KALIJARVI, THORSTEN	University of New Hampshire
LATANÉ, JOHN H.	Johns Hopkins University
LAUBE, FRANK J.	University of Washington
LOWRIE, S. GALE	University of Cincinnati
MANLEY, JOSEPH	Marietta College
MARTIN, CHARLES E.	University of California, Southern Branch
MIDDLEBUSH, FREDERICK A.	University of Missouri
MILLER, BARNETTE	Wellesley College
[1] MYERS, DENYS P.	World Peace Foundation
PERKINS, DEXTER	University of Rochester
POTTER, PITMAN B.	University of Wisconsin
QUIGLEY, HAROLD S.	University of Minnesota
REEVES, JESSE S.	University of Michigan
ROBINSON, G. H.	Boston University Law School
ROBINSON, WILLIAM A.	Dartmouth College
SHEPARD, WALTER J.	Brookings Graduate School
STANWOOD, DANIEL C.	Bowdoin College
STEWART, IRVIN	University of Texas
STOWELL, ELLERY C.	American University
STUART, GRAHAM H.	Stanford University
THOMAS, ELBERT D.	University of Utah
THORPE, FRANCIS N.	University of Pittsburgh
TRYON, JAMES L.	Massachusetts Institute of Technology
WILLIAMS, BRUCE	University of Virginia
WILSON, GEORGE GRAFTON	Harvard University
WRIGHT, HERBERT F.	Georgetown University
WRIGHT, QUINCY	University of Chicago
WRISTON, HENRY M.	Wesleyan University

[1] Invited to participate by the Conference.

COMMITTEE ON PERMANENT ORGANIZATION

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WRIGHT, QUINCY.....University of Chicago

RESOLUTIONS AND RECOMMENDATIONS OF THE CONFERENCE

The Second Conference of Teachers of International Law and Related Subjects met in Washington on April 23, 1925, for the purpose of continuing the work of the First Conference, held in Washington in 1914.

After careful consideration and discussion of the resolutions of the First Conference, and the proposals and projects laid before it, the Conference in its final session of April 25, 1925, adopted the following resolutions and recommendations:

I

The Conference is of opinion that a permanent organization should be effected and periodical meetings be held, and to this end the Director of the Conference is requested to appoint a Committee on Permanent Organization [1] with power to act and to add to its number.

II

The Conference notes that in addition to the instruction in international law there is a variety in the courses in various colleges dealing with international relations. The Conference recognizes the special needs of undergraduate instruction in international law as well as of professional and graduate instruction. The Conference favors the development of undergraduate courses in international relations including the trade and economic relations as well as in international organization. The Conference also recognizes that a special kind of technical instruction in international law should be given in graduate and professional courses and it favors the separation of courses in international relations from courses in international law.

III

Considering the fact that summer schools now exist in some eighty-five American universities and colleges, and that the student body of such schools is largely composed of teachers in the various school systems, and that at the present time courses in international law are given in less than one third of these institutions, the Conference hereby recommends that all universities and colleges having summer

[1] For composition of Committee on Permanent Organization, see *ante*, p. ix.

schools offer elementary courses in international law and related subjects, and advanced courses whenever the conditions warrant it.

IV

The Conference recommends that a letter prepared by the Committee on Permanent Organization be sent to the deans of graduate schools and to the chairmen of departments of political science and of history in the universities and colleges throughout the country, urging them to recognize the indispensable character of a knowledge of the elements of international law for the proper training of any candidate for an advanced degree in political science or history.

V

The Conference wishes to record its satisfaction in the standing resolution passed by the American Bar Association in including the subject of international law in its recommendations for a deeper and wider training for admission to the bar.

Considering that in view of the increasing contact of professional practice with international law topics, and in view of our national habit of staffing governmental offices from the legal profession, and in deference particularly to the American Bar Association's standing resolution, the Conference urges that courses in international law be offered in all law schools, and that this instruction be professional in character.

VI

The Conference wishes to express its appreciation of the measures that have been taken by the Carnegie Endowment for International Peace in fulfilment of the resolution of the Conference of 1914 with reference to the establishment of Fellowships for the study of international law; and the Conference notes with satisfaction that the Fellowships so established have already yielded excellent results. The Conference ventures to express the hope that the number of these Fellowships for both students and teachers may be increased in the future and that the stipend allowed may also be increased.

VII

The Carnegie Endowment for International Peace has furthermore given its aid toward the accomplishment of another wish of the First Conference of 1914, and made available for students and teachers of international law the opportunity to attend the courses of lectures

offered each summer by the Academy of International Law at The Hague. The Conference wishes again to express its appreciation and its satisfaction at this happy event.

VIII

The Conference takes note of the inaccessibility of judicial decisions and legislation relating to international law in the various countries and expresses the hope that some means may be found for compiling such decisions and legislation and making the compilations generally available.

IX

Considering that the study of official documents is of first importance for the development of the science of international law, and that it serves as preparation for those who intend to enter the Foreign Service,

The Committee on Publications is requested to communicate with the Secretary of State or other officials in order to request that treaties, diplomatic correspondence and other documents of value in the study of international law be made more easily and more immediately available for students of international law and international relations.

X

The Conference deems it desirable that the United States Treaty Series be placed on sale by the Superintendent of Documents so that libraries, teachers and others may secure this essential documentation on a subscription basis. Accordingly, the Conference requests the Committee on Permanent Organization to communicate this resolution to the Secretary of State and to the Superintendent of Documents and to request them if possible to take the necessary action.

XI

The Conference expresses its appreciation of the monumental service to the study and practice of international law rendered by the Honorable John Bassett Moore in his scholarly Digest of International Law, and expresses the hope that if and when the Department of State decides to authorize the free and unrestricted editorial examination and use of the entire diplomatic correspondence of the United States since 1901, as was done with that prior to 1901, Judge Moore be invited to publish a supplementary volume to his Digest of International Law, the original work in eight volumes to remain unaltered.

Copies of this resolution are to be sent to the Secretary of State and to Judge Moore.

XII

The Conference desires that a memorial be sent to the Carnegie Endowment for International Peace, proposing for its consideration a work of collaboration amongst the associations interested, with the object of preparing for a more comprehensive bibliographical compilation or guide to cases, treaties and official documents on international law.

XIII

The Director of the Conference is requested to appoint a Committee on Publications[1] with power to act, to consider the desirability of promoting:

(1) a dictionary and encyclopedia of international law;

(2) a treaty collection in English including the periods covered by Dumont and Martens down to the beginning of the League of Nations Treaty Series, to be compiled by a cooperating committee of scholars;

(3) preparation of lists of books for small libraries and for larger libraries.

XIV

The Conference desires to record its appreciation of the action of the Carnegie Endowment for International Peace in making the meetings possible and in assuming the expense of printing and distributing the Proceedings, and the Director of the Conference is requested to communicate this resolution to Dr. James Brown Scott as Secretary of the Endowment

[1] For composition of the Committee on Publications, see *ante*, p. ix.

SECOND CONFERENCE OF TEACHERS OF INTERNATIONAL LAW AND RELATED SUBJECTS

THE NEW WILLARD HOTEL, WASHINGTON, D. C.
APRIL 23–25, 1925

FIRST SESSION

Thursday, April 23, 1925, at 10 o'clock a. m.

The Conference convened at 10 o'clock a. m., with Dr. JAMES BROWN SCOTT, Director of the Division of International Law, Carnegie Endowment for International Peace, in the chair.

Dr. SCOTT. Ladies and gentlemen: On behalf of the Division of International Law of the Carnegie Endowment for International Peace, I have the very great pleasure and the honor of declaring opened in the city of Washington the Second Conference of Teachers of International Law. The first Conference, as you will recall, was held at the initiative of the Carnegie Endowment for International Peace. At a meeting of its Trustees in 1914 the then venerable Dean of the Diplomatic Corps of the United States, the Honorable Andrew D. White, proposed that a meeting of teachers of international law should be held in the near future to consider the means by which this teaching might, if possible, be made more effective and more fruitful so as to influence the young professors, to the end that the principles of international law should be diffused more generally among the people at large.

The American Society of International Law was to be the host on that occasion. They accepted the invitation and the first union or Conference of Teachers of International Law was held in this city some years past.

On this occasion the initiative is not from the Endowment for International Peace but from the teachers themselves. Apparently they regarded the results of the first as sufficient to justify a second meeting, and the history of the movement culminating in the presence here of such distinguished teachers of international law is stated in a letter from Mr. Dickinson, under date of January 5, 1925, which I have the pleasure of reading to you:

There was held recently in Washington, in connection with the annual meetings of the American Political Science Association, a Round Table on International Affairs. Two sessions of this Round Table were devoted to Research and Instruction in International Politics and Law. At the conclusion of the second session, the suggestion was offered and enthusiastically received that it would be desirable to have a conference of teachers of international law and related subjects in Washington in connection with the next annual meeting of the American Society of International Law. Several of those present referred to the Conference held in 1914 and emphasized the advantages to be gained from another conference similarly constituted. It developed that there was unanimity of opinion in the Round Table in favor of having such a conference at an early date.

The action taken by the Round Table is epitomized in the following extract from the minutes of the session:

"Upon motion of Professor George Grafton Wilson, seconded by Professor Quincy Wright, the Round Table voted unanimously to instruct the Director to communicate to the Secretary of the American Society of International Law and to the Director of the Division of International Law of the Carnegie Endowment for International Peace the following Resolution 'That it is the sense of the Round Table on International Affairs of the American Political Science Association that a conference of teachers of international law and related subjects should be held at Washington in connection with the meetings of the American Society of International Law in April, 1925.'"

This Resolution, as I understand it, was voted simply as an expression of opinion and was ordered communicated to you in the hope that you would be willing to bring it to the attention of such appropriate officials of the Carnegie Endowment for International Peace as might be interested in taking further action. I append a list of those who were present at the Round Table session, at the time of adjournment, and who subscribed their names to the Resolution.

I take pleasure, on behalf of the Round Table, in communicating the Resolution to you as directed.

In pursuance of this letter the suggestion for a meeting of the teachers of international law was laid by the Director of that Division before the Executive Committee of the Carnegie Endowment and unanimously approved. It was also laid before the annual meeting of the Trustees of the Carnegie Endowment and likewise approved, and funds were placed at the disposal of the Division in order to meet the expenses of the meeting.

The program committee of the American Society of International

Law believed that it would be more appropriate to have the teachers, who were expected to attend in large numbers, meet under an organization of their own choosing and a program which they should devise. The members of the committee, however, were anxious that the teachers of international law should meet at the same time as the Society so that members of each body might profit by the presence of the other.

In pursuance of this action on the part of the Division of International Law, the Executive Committee and the Trustees of the Endowment, an invitation in the following terms was sent out under date of March 12, 1925:

> At the suggestion of a number of professors of international law, the Carnegie Endowment for International Peace has consented to sponsor, through its Division of International Law, a conference of teachers of international law, to be held in Washington, D. C., April 23–25, 1925, at the New Willard Hotel. The general purpose of the conference will be to continue the work of the previous conference on the same subject which met in Washington in 1914. An account of the proceedings of that conference will be found in the preface and first sixteen pages of the pamphlet entitled "Recommendations on International Law," which is being mailed to you under separate cover
>
> A detailed program of the proposed conference is now being worked out and will be later sent to the participants. The purpose of this letter is to advise you of the conference and to invite you to be present and take part in the proceedings. Any suggestions that you may offer as to the program and organization will be welcomed. For those who desire to avail themselves of it, a fund has been provided out of which will be reimbursed the railroad expenses of those who accept this invitation and are present at the conference.
>
> It is realized that the conference will occur at a time when it may not be convenient for you to be absent from your institution; but in view of the purpose of the conference being strictly in line with your educational pursuits and the conference being intended to assist in developing the subject in which you are professionally interested, it is hoped that these considerations will outweigh any inconvenience which may be caused by your temporary absence during the academic year.
>
> An early response will be appreciated.

While it is true that the present Conference is sponsored by the Division of International Law of the Carnegie Endowment, it is separate and distinct. Invitations to the teachers of international law

were prepared in and sent from the office of the Endowment, as the Conference was in a certain way due to the intervention of the Endowment, but all the details, all the invitations, the program and everything connected with the meeting has been worked out by the teachers of international law. I think it will not be invidious to state that the success of the movement culminating in your presence here is due to Professor Dickinson of the University of Michigan, who undertook this laborious and inconspicuous but very necessary rôle; it will not be, I hope, out of place to mention that Professor Dickinson has honored us in times past by consenting to accept a Carnegie fellowship in international law created at the request of the first Conference of Teachers of International Law held in 1914. Of these fellowships there have already been some eighty holders. The committee has been a bit generous in interpreting the word "fellowships" on certain occasions to mean what I may call, and not inappropriately, "sisterships" in international law. But the purpose was to secure, so far as possible, a little more time for preparation in the teaching of international law, and to provide persons with aid who might intend to devote their time and their service to the cause of international law, both in the classroom and among the people generally

Tomorrow at 1 o'clock there will be held a luncheon which the Division of International Law of the Endowment honors itself by offering, and it is our hope, and, indeed, it is our expectation, that the teachers of international law present will likewise accept this invitation, which will then terminate the official connection of the Endowment with the Conference, other than such slight temporary and fitting connections as you may care to establish by visits either before, during, or after business hours to the auditor of the Endowment, who has certain slips of paper which you may find useful in securing a rapid and easy method of return to your intellectual and international labors.

I would like, ladies and gentlemen, to make a further remark in closing. The program is one of your own making; the speakers and officers are those of your own choosing; the deliberations will be yours, and the results achieved will be those of the teachers of international law. I cannot resist the feeling that whenever the Division of International Law advances material aid to scientific bodies it should eliminate itself from those proceedings, because there is always a danger that a scientific body or gathering held under the auspices of such an institution as ours may be accused of being "tarred" with the brush of propagandism. This would be as unjust as unfortunate for

you are here, not to consider any particular phase of international law or of international activity, but rather to consider the methods by which the teaching of international law may be rendered more effective in its methods and more fruitful in its results. These are matters for you exclusively to consider and determine.

I would express the hope, however, that your deliberations be given such form and the recommendations that you may adopt will be of such value that you will deem them worthy of publication. If this should be the case the Division of International Law of the Carnegie Endowment for International Peace will be glad to publish and distribute the proceedings of your Conference according to such instructions as you may care to give to its Director.

I hope that your sojourn in Washington, in this most beautiful season of the year, will be a pleasant one, and that you will carry to your respective homes a gracious memory of the capital of the nation. I would add the further hope, that through your labors the teaching of international law will be facilitated; that the second conference will justify itself to such a degree that its members may decide upon periodic conferences at a shorter interval than that which has elapsed between the first and second; and that through the labors of the teachers meeting in successive conferences there may grow up an élite not only able to direct the study of international law in the classroom, but also to influence, in some measure at least, the public opinion of the good men and women of this country, upon whom, ultimately, depends the policy of these United States in their foreign relations.

In accordance with the program, I shall ask Professor Stowell to take the chair.

ROUND TABLE CONFERENCE ON PROBLEMS OF INSTRUCTION IN INTERNATIONAL LAW AND RELATED SUBJECTS

Presiding: Professor ELLERY C. STOWELL, the American University.

The CHAIRMAN. I will ask Professor Dickinson to say something to us about the plans of the Conference.

Professor EDWIN D. DICKINSON. Mr. Chairman, ladies and gentlemen: May I make one or two additional announcements and emphasize one of the announcements that is already on the printed program?

Mr. Crocker of the Carnegie Endowment had brought over a book for

registration, and will those who have not already registered kindly do so before leaving the meeting this morning.

In order to establish connections with the work of the previous conference we have provided seven committees of three members each, as you will see from the last page of the program. These are preliminary committees, constituted in order that something might be under way as soon as the Conference assembled. It is our hope that members of the Conference not already assigned to committees will wish to assign themselves to some one of these committees, to meet with the committee of their choice, and to contribute to its final report, and I am going to ask that those not already assigned do assign themselves by communicating their intention in each case to the chairman of the committee. Will you kindly do this at as early an hour as possible? The chairmen are indicated on the last page of the program.

Mr. Hull, Chairman of Committee No 1, will not be here until the latter part of the afternoon, and Mr. Stowell has kindly consented to function as chairman of Committee No 1 until Mr. Hull arrives. Those who wish to assign themselves to Committee No. 1, therefore, will kindly communicate at their earliest convenience with Mr. Stowell.

Meetings of these committees will be held at the Carnegie Endowment headquarters, at No. 2 Jackson Place, tomorrow at some hour between 9 00 and 4 30; and I will ask the chairman of each committee to see Mr. Young at the Endowment and arrange for a room and stenographic assistance. Will the chairman of each committee communicate with me this morning and inform me as to the hour tomorrow at which his committee is to meet, so that I may be in a position to announce the hours of meeting for each of the seven committees at the Conference this afternoon?

The meeting this afternoon will be in this same room The luncheon tomorrow will be in the Cabinet Room on the second floor, and the General Conference on Saturday will be in the Fairfax Room across the hall.

If Mr. Scott will permit me, may I correct his announcement as to the time of the luncheon? The luncheon tomorrow is scheduled for 12 o'clock in the Cabinet Room on the second floor.

The CHAIRMAN. I shall not take any of your time for remarks. I will only draw your attention to one point that Mr. Scott mentioned; namely, the advisability of the permanence of the Conference—of establishing its continuity.

Certain tentative rules suggested by the Chair have been approved by Mr. Dickinson, the Director, by Mr. Finch, and others, and are laid before you. If there is no objection, they will be the rules governing our discussion this morning.

> The discussions are open to the public, but only members invited to the Conference shall participate.
>
> Speakers shall be limited to five minutes, excepting those opening the discussion, who shall be allowed ten minutes.
>
> No member of the Conference shall speak twice until every other member desiring to speak has had an opportunity to do so.
>
> Each speaker shall clearly state his name and the institution which he represents before beginning his remarks.
>
> After the discussion is opened on topic I, a preliminary discussion of twenty minutes will be allowed, after which topic II will be opened and the same period allowed. After topic III, however, members of the Conference may discuss any or all of the topics.
>
> Speakers who read from manuscript are requested forthwith to leave their copy with the stenographer.

Is there any objection to the adoption of these rules?

There seem to be none and we shall consider them adopted.

I will call on Professor Quigley of the University of Minnesota to open the discussion of topic I.

The Scope, Organization and Aim of Courses in International Law in Relation to Other Courses in International Subjects

Professor Harold S Quigley. Mr. Chairman, and ladies and gentlemen: I have taken the liberty to change the topic on the program simply to the extent of putting aim first. I thought perhaps there would be some chance of my hitting something if I at least aimed first.

One might paraphrase a well-known aphorism thus: "International law without international relations has no root; International relations without international law have no fruit." Yet it was the writer's experience to spend the pre-war years as a student of history and politics in one of England's great universities without an opportunity to attend even a course of lectures upon anything that had happened in Europe since 1837. Political scientists have left the teaching of international politics to historians—cautious people who seldom wish to venture into matters of recent and contemporary importance. We have only ourselves to thank if they decline, in the future as in the past, to enter what is essentially our field. We may, however, expect the cooperation of historians in writing and teaching the facts of

international intercourse. The proper treatment of international law and relations is thus a cooperative undertaking requiring workers from several fields, among them international law, international politics, history, geography, economics, etc.

The significant words in the title of this paper are "in relation to other courses." Its function is not to trespass upon the topics of the other speakers but to indicate certain relationships between courses in international law and in other international subjects. The problem suggested in the word "aim" is taken to be that of seeking to determine what courses in international law and related subjects will, on the one hand, conduce to the development of a better international order and, on the other, best serve the needs of students while maintaining their interest; the problem of "scope" involves the general nature of the subject-matter of the different courses; while that of "organization" presents the obligation to suggest distinctions and relationships between courses in such a way as to avoid confusing international law with policy and international with municipal organization while presenting a whole and true picture of the facts of international life.

It would seem unnecessary to attempt to prove the desirability of the double aim suggested for courses in international law and related subjects—that of developing a better international order while serving and interesting students. As for the second element, that must be accepted whether we will or no, and on the first there need be no opposing cry of "propaganda" if by that term anything educationally unworthy is intended. What is meant is the necessity of placing the conditions of international society before that large section of American people whose minds are still open and eager and whose prejudices are still uncrystallized. A peculiar teacher he must be to whom that task will not make an appeal beyond the merely pedagogical, who will not see in it a magnificent opportunity to assist in advancing the cause of world unity and world peace.

Passing to the second phase of this topic, that of the scope of courses in international subjects, one notes immediately the necessity of distinguishing the problem of the small college from that of the university. In the college it is usually the case that one teacher is required to handle all the work in political science, to say nothing of places where additional courses in history or economics are added to his burden. With some college presidents the problem of the curriculum is more difficult than with others but it would seem a counsel of wisdom to apply, if possible, the principle with which James I instructed his

parliament: "*tractent fabrilia fabri*," which, I take it, all of my hearers will recognize as another rendering of the old injunction: "Let the cobbler stick to his last." There is greater probability of harm than of good proceeding from courses in subjects for which the teacher is untrained and in which his interest is slight. Wherefore it is preferable that the small college curriculum should be adapted to its faculty rather than to any scheme calculated to produce a well-rounded catalog. If the teacher is prepared in the international field, he and his students will be fortunate if he is allowed free scope to develop that side of the subject; if he is not he will do well to follow his interests along other paths.

In the brief time at my disposal for the preparation of this paper I examined very hastily the catalogs of ten recognized colleges in different parts of the country. It was rather surprising to find that eight of the ten offer courses in international law. However, the two which do not are both colleges of very high standing. Four colleges offer general courses in world politics, seven offer American foreign relations, and four offer other courses in the field of foreign relations. Averaging all the courses among the ten the quotient is about two courses in the international field per college. The arrangement of courses at Swarthmore is that ideal one obtainable when ideal conditions prevail. The work is divided into four groups: European History and Diplomacy, English History and Diplomacy, and American History and Diplomacy, each offered throughout three years, and International Law and Government, covering two years.

To what extent the content of the international law courses offered in the eight colleges was in fact international law, to what extent it was history or politics or ethics or something else, one may not venture an opinion save as the graduates of certain colleges have later revealed to him personally what they received. The general impression that they convey is that of hardly having come to distinguish law from policy, not to speak of their dim comprehension of international law as a subject of every-day application in the courts. The conclusion naturally reached is that their unprepared teachers have wasted a lot of time and that in at least a considerable percentage of colleges attention may more profitably be devoted to courses in other subjects than international law. Nor does it follow that such other subjects should be in the general field of foreign relations or diplomatic history, for which historical training and imagination are special qualities not always found in political science teachers. The problem can only be settled with regard to the special circumstances of each college.

The scope of courses in international law and relations in a university will vary under the influence of many different factors. It is possible, through the cooperation of several large departments and, in some cases, of a law school, to offer a very rich schedule. Among the courses essentially legal in nature one may place not only the general and case courses in international law and the advanced theory and topical courses and seminars in that subject but courses in international organization or government, in treaties and in the technique of diplomacy and consular service. The varying usage of the terms international relations and diplomacy may be noted as productive of confusion annoying to some and rather pleasant to others. Of a more reprehensible character is the failure of some teachers to entitle their courses in accordance with the content. One can find quite easily instances of courses in international politics being given a catalog title of international law and vice versa.

Alongside the courses in international law and organization there is developing a constantly widening curriculum of courses in international politics or relations. With these one must include the courses in diplomatic history which are their logical foundation. There is evident a quite general tendency to establish a course of rather elementary grade under some such title as World Politics with the purpose of opening up the field and stimulating a more general interest in international affairs and of giving enough of the actual content of contemporary relations to make even sophomores disgusted with the newspapers but aware of the significance of what little information they contain. Thereafter the student finds open to him more specialized courses in American foreign relations, Latin-American relations, Far Eastern politics, and other divisions of the general field.

With apologies for its obvious inadequacy, I may say that a hurried survey of sixteen university catalogs revealed that all are offering at least one course in international law, that six have courses designated as advanced courses in that subject, eight are offering international organization, three a course in the diplomatic and consular services, and one a course in treaties. Twelve of these universities have law schools and only two of these do not include international law in their curricula. Twelve universities offer world politics, fifteen give courses in American foreign relations, fifteen offer advanced courses in recent European relations, five deal with Latin-American relations, and scattering courses in other fields are open in a few places.

It is rather unaccountable to find only eight out of sixteen universities offering courses in international organization, except upon the supposition that they are including some material upon that subject in the course in international law. If that be true it is fortunate, but still better would be the devotion of a full year to the course in international law and, in addition, at least a semester to the organization. Another discrepancy is the scarcity of courses in the foreign services. It seems probable that the recent improvement in the conditions of service and retirement in the American services will result in the introduction of courses into other universities if men with some professional experience or with experience involving a more intimate contact with these services than most academic men possess are available for the work. It may be suggested, however, that the historical study of the art of diplomacy is a fascinating subject that falls within the scope of political science whether or not it is taught with a professional end in view.

It was suggested above that the problem of organizing courses in international law and other international subjects concerns essentially the relations between law and politics. It will leap to the mind at once that international law must be dissociated from all entangling alliances and must be presented as a body of positive law. Resolution No. 4 of the 1914 meeting of this body included the following clauses which still require emphasis: "In the teaching of international law care should be exercised to distinguish the accepted rules of international law from questions of international policy. . . . Courses in the foreign policy of the United States should therefore be distinctly separated from the courses in international law, and the principles of American foreign policy, when discussed in courses of international law, should always be tested by the rules which have received acceptance amongst civilized nations."

It is, apparently, the tendency of the political scientist to reduce diplomatic history to general principles of national foreign policy that has led him to confuse national principles of policy with international principles of law. As a student of the historical development of international law he cannot but realize the part that national interest has played in the gradual evolution of customary law and it is an easy transition to an unconscious attempt at assisting in that evolution by labelling a contemporary policy as a rule of law. Such activities are sometimes nationalistic but it is equally likely that in their eagerness to

demonstrate progress or to castigate wrongdoing writers or teachers may disregard state lines in their efforts to identify actions as in accordance with or contrary to international law.

It does not, however, follow that because law is not policy and policy is not law neither should be considered at all in courses dealing with the other. Even in courses taught by the case method the facts of many cases are likely to arouse interest regarding their background and indeed the cases may be meaningless in their bearing upon legal development unless they are discussed in the light of history or contemporary policy. On the other hand, to the political scientist international politics gains most of its interest from the possibilities it contains of evolving principles which may at some time be generally accepted and become the rules of international law. The exposition of either type of material before a class is only to be accomplished successfully if the teacher knows them both.

In conclusion permit a word on behalf of that being *sui generis*, the American college student. Insofar as considerations of this character refer to undergraduates it may not be forgotten that they are in great need of assistance in correlating their various courses to the end of a unified and purposeful view of life. Hence the advisability of keeping constantly in mind the importance of suggesting the relationships between the different subjects enrolled upon our ever-mounting list of courses in international law and relations, in order that whatever tendency to world cooperation there may be in what must seem to the student a tremendously complex competitive society may be taken account of and understood as a part of a very long but on the whole an encouraging process of evolution.

The CHAIRMAN. Is there any discussion of this paper? Twenty minutes will be allowed for discussion at the present time.

Professor PITMAN B. POTTER. I should just like to add a word of endorsement to what Mr. Quigley has said regarding the desirability of keeping distinct the subjects of international law and international organization. It has occurred frequently in classes of students working with me that the students have themselves been unable to distinguish between the two topics, largely because of the treatment of the topics which they found in the literature to which they were referred for reading purposes, and it seems to me that nothing could be better calculated to promote the progress of both subjects than the practice of keeping them distinct. It is not a matter of crying down international law to insist that the treatment of international law shall keep away

from international organization. As a matter of fact, as we all know, the subject of international law has suffered in the past, very largely, by the injection into it of various considerations of policy and ethics. Today it is being contaminated, I believe, by the injection of various considerations concerning organization and procedure which are not sufficiently stabilized to be regarded as law.

Similarly, it seems to me that it would be a very valuable thing, in the courses dealing with the foreign service of the United States, if we could get away a little bit further from the treatment of that subject from the point of view of constitutional law. A good many facts which would justify a descriptive treatment of the foreign service of the United States would not justify any conclusions from the point of view of constitutional law, and I have found personally that students are very much more likely to be interested in the foreign service of the United States and in the practical prospects of entering that service and performing some public service for the country if they are introduced to the topic not by constitutional law but by some other method—the descriptive, or the analytical method, perhaps—but certainly a non-legalistic method.

Professor MANLEY O. HUDSON. I wonder if a somewhat sharper distinction ought not to be drawn between courses in international law in colleges and courses in international law in law schools? I do not profess to know very much about the courses in international law in the colleges, nor about the special problems of those courses. But I have been inclined to hope that international law would receive a place in general juristic science comparable to that of other branches of the law, and I am attempting to do my work at the Harvard Law School in international law precisely as I do my work in the law of torts or as in the past I have done my work in the law of property.

It may be that the courses in college can better be devoted to international politics, to diplomacy, to economic relations between peoples, and to international organization than to law itself. I do not know about that However, when I am dealing with international law in the law school, I do not find it possible, Mr. Chairman, to make this sharp distinction between policy and law which Mr. Quigley and Mr. Potter both seem to insist that we draw. I find myself tending in the opposite direction, to say that the thing that has been needed in our international law has been emphasis on its very relation to policy.

International law is a factor in the development of the life of States which have become an international community, and I cannot consider

a problem of international law apart from questions of organization, apart from questions of procedure, apart from questions of economics, apart from questions of policy, if you wish to call them that.

The situation is the same in international law as in the law of torts. There was a feeling going around a generation ago that the law of torts could be taught without any relation to economics or to sociology or to social psychology or to any other of the social sciences. The thing that our law schools suffered from during the last half of the last century, I am quite satisfied, was a divorcement of law from other social sciences.

So that I am rather disappointed today to find an insistence on the divorcement of international law from what I should like to call international social science. I should insist that we bring them closer together, rather than to put them further apart. (*Applause.*)

Professor DANIEL C. STANWOOD. I have come to learn, to ask questions, to be taught, and not to answer questions, but Mr. Hudson has rather inspired me to say something of the same nature.

I was brought up under the tutelage of Thomas Erskine Holland and Sir Frederick Pollock, an old die-hard Austinian, and if I were to teach international law to my pupils as they taught me, I would end my course in about the middle of November. That is, the lines were so strictly drawn that international law *per se* occupied a rather small place in the life of our academic curriculum. I remember the castigation I got one time when I wrote a paper which I entitled "International Equity." Professor Holland said, "No, no, no"; but I think that is where we came to the dividing line just exactly as law schools do not confine themselves to law but teach equity also.

I think we may put in a separate category certain things which we call policy and call them international relations.

I devote my second semester to our own relations and our own attitude toward the principles I have taught in the first semester. I cannot, any more than Mr. Hudson can—although I come from a college and not from a university and there is no law school—divorce policy from law altogether. I do sometimes tell them that the glaring headlines in some of the text-books, particularly the Monroe Doctrine, are not law.

I would like to know from other teachers in small colleges to what extent they include international policy, because, really, when we get down to it I think the more useful realm of investigation by boys as they go out from colleges is in the field of international policy and international interests and relations rather than the strict and confined area of international law.

Professor GUSTAVUS H. ROBINSON. I want to say a word about our job in the law schools, rather corroborating what Mr. Hudson has said about his job. I looked through the catalogs, and I spent a long day on them, on 110 of them, and I found that sixty-five did not offer international law at all. About forty-five do, but there is no way of telling what they consider international law. Nor is it clear how much of it is taught.

It seems to me, if we are going to ask the law schools to teach international law, that it might be a part of the job of this Conference to determine what we mean by it. I find a very great difficulty—any man does who endeavors to teach law—in defining this subject as law, and Mr. Stanwood has given me a text, so to speak, as to the Austinian concept. I find that in a great many cases the student is inclined to be an Austinian. I have to "sell" the course in the advertising sense in the first one or two lectures, because the class asks "How is this 'international law' law," and I have got to go into some kind of historical background. I have got to treat also the background, so far as I know it, of the particular problem under discussion in its particular setting. It does seem that there are several aspects of international law; it might appear in a particular problem dealing with an arbitration, or with a political discussion, or with a litigation. If you are dealing with a court question, and that is the now established presentation to law students, it is colored by the amber in which it appears. The decision is law as to the individuals involved. The student sees that. As to their nations, he wants to know.

I should hope that this Conference, as it goes on, will block out in some measure the sort of thing we may ask the law schools to teach as international law. Leaving out the field that the boys may have already covered in the colleges as political science, I am persuaded that there is a whole field of the general subject which ought to be a routine part of professional equipment for a law degree. But I, personally, am sure that it must be presented by means of cases.

Professor JOHN H. LATANÉ. I had occasion to read with considerable care a very interesting book on the freedom of the seas, which wound up with a discussion of the question of international organization and adopted the general conclusion that the only solution of that question was through some organization like the League of Nations. I would like to know how Mr. Potter reconciles a discussion of that kind in his very interesting book and paper with the remarks he has made here this morning.

The CHAIRMAN. Might we ask Mr. Potter to answer that after the discussion is over?

Professor LATANÉ. All right.

The CHAIRMAN. We are all equally interested, I think, to hear Mr. Potter's answer, and shall await it after this discussion, which comes first.

Professor CHARLES G. FENWICK. I should like to ask Mr. Potter if he would tell us how it is possible to separate international organization from international law and not include in international law the very methods by which the law is created and enforced. Imagine giving a course on the constitutional law of the United States and not dealing with the organization of the government under which that law is created and by which that law is put into effect Imagine a course on constitutional law that did not discuss the powers of Congress and of the President, or the functions of the courts Imagine a course on constitutional law confined to the fourth article of the Constitution and excluding the first three. To suggest a course on international law that does not deal with organization is to empty the whole subject of its real significance. To give merely a few technical discussions on extradition and topics of that kind, without stating their relation to the organization under which they operated, would have almost no meaning.

Miss ELLEN DEBORAH ELLIS. I want to second what Mr. Fenwick has said. I suppose that the difference is that in these small colleges of liberal arts we have to provide our own background. A great many law students know a great deal about the government of the United States before they study constitutional law, but where the problem is that of providing the law and the background in one course it becomes a problem of finding the right relation between the two.

Professor QUINCY WRIGHT. It seems to me that the international law teacher has to make sure that the students realize that there is a standard by which national conduct will be judged by other people. The subject of diplomacy or international politics as such is likely to lead to the view that the only standard by which national conduct will be judged is that of tradition. Now I think it is important, in a course on international law, to make it in that sense distinguished—maintain the same point of view throughout, namely, the point of view of an objective standard by which national conduct will be judged the world over. If that point of view is maintained, and it is driven home to the student that there is such a standard, it seems to me that the material you deal with can be very broad. It is not a question of materials but

of maintaining the common point of view, and I should think it unfortunate if international law were so mixed up with politics that that point of view would be lost sight of.

Professor HUDSON. I would like to ask if Mr. Wright would agree that perhaps he is emphasizing the difference between national policy in this respect and international policy. Perhaps that is the reason why we do not have a complete meeting of minds. I think perhaps Mr. Potter means national policy rather than international policy.

The CHAIRMAN. Will you not come back to that interesting point later, Mr. Hudson?

Mr. EDWARD A. HARRIMAN. I agree with the last speaker that the point of view is the important thing in the matter. You can approach the subject of international relations from the point of view of the historian, the statesman, the lawyer, the psychologist, or the moralist. Now, confusion arises from the fact that in approaching the subject, men fail to distinguish in what capacity they are acting. The historian wishes to know the facts; that is his duty, to ascertain the facts. The duty of the statesman is to do the best he can for his country. The duty of the psychologist is to analyze the emotions, the thoughts of people, of nations. The duty of the moralist is to uphold the ideals which he represents.

But the lawyer is fundamentally in a different position. Law is purely an artificial product. It is the product of government. Without government it does not exist. The lawyer deals with an artificial and conventional set of rules, which are the rules of the particular government with which he is concerned.

Mr. Scott in his casebook on international law says that all international law is part of municipal law. Certain rules of international law are part of the municipal law, but those rules vary, just as the rules of contracts vary in different jurisdictions. What is called international law at times consists of the rules which are supposed to govern and control the conduct of nations toward each other. Those rules are not legal rules, and the application to those rules of legal reasoning involves nothing but fallacy and confusion. What is the sense of saying that a rule of international law is so and so and then letting all the great Powers of the world defy it? It is said by different writers that the Treaty of Versailles is faulty from the lawyers' standpoint and only from the lawyers' standpoint. The division between legal reasoning and the ideals of moralists, statesmen, historians and psychologists ought to be emphasized, and from my own study of the sub-

ject, and from teaching the subject, I find that the whole difficulty arises from the fact that the cobbler does not stick to his last, that a man wishes to be at the same time a lawyer and a moralist.

Until we reach the stage where we discriminate clearly between what we see as a matter of history, as a matter of diplomacy and statesmanship, as a matter of psychology, as a matter of moral idealism, and as a matter of law, we shall suffer from the confusion that has brought international law into contempt as a subject.

Contempt is a strange word to use here, but the contempt is shown by the people who disregard it. Take one single instance, that of the Panama Canal, which is Theodore Roosevelt's monument. It was announced by many learned gentlemen that President Roosevelt and the United States violated international law. That, to my mind, is a meaningless phrase. A writer on foreign affairs has said that international law, so called, is nothing but the law of the jungle, and the only way in which it can be made law is by the acceptance of an international organization such as the League of Nations

This is not an argument for the League of Nations, but simply to state the artificial conditions under which a lawyer has to work.

The CHAIRMAN. This subject is one that interests us all. I hope we may later have a further vigorous and valuable discussion. I think out of fairness to those who have prepared papers and perhaps in order to broaden the scope of discussion it will be right now to call for the next paper. We can, thereafter, return to this interrupted discussion I will ask Professor Fite of Vassar College to read his paper.

THE MORE EFFECTIVE METHODS OF INSTRUCTION IN INTERNATIONAL LAW AND THE USE MADE THEREIN OF TEXT-BOOKS, TREATIES, CASES, DIPLOMATIC INCIDENTS AND CURRENT INCIDENTS AND EVENTS

Professor EMERSON D. FITE. Mr. Chairman and ladies and gentlemen: I have no set remarks and no paper at all, but in the short time allotted to me I want to set forth some points from the point of view of the small college. We are getting away from that in this discussion.

To my mind our object in the college is to teach our students to think. It is not to present any particular body of knowledge; we are not to have any particular nervous interests in sending our students away from us in the senior year possessed of a certain body of knowledge. Perhaps they will forget everything they learned along the line of fact, but they will get a point of view and a mental habit. That is

what we are teaching and I believe a good many of us have forgotten that since about the 1st of August, 1914.

We must remember that we are not the only people concerned in this question about how to teach international law. Where I teach there is almost a soviet form of government. We have a students' curriculum committee, and a great many of the institutions around us have student curriculum committees. I am not interested in particular in the point of view that comes out of that students' curriculum committee. I am impressed with the fact, on the other hand, that in our classroom we have critical students, we have a critical audience, and we have to keep that point in mind when we try to determine our method.

If these two tests be true, it follows thirdly that we have nothing to do with propaganda; we have nothing to do with any particular form of international organization. We have our views and we can teach them, but if we teach them we have to teach the other side of the same thing.

It follows further that we have no particular interest in a printed outline or a syllabus. I think the underlying assumption in all that method of teaching is that we have to be very careful to teach certain things, certain facts, and we have forgotten all about our method that we want to train the minds of our students if we take that point of view.

It seems to me that what we want if we appeal to the reason and the good judgment of our critical audience is to follow the case method. I like the case method because it induces in my students the type of mind which is the judicial type. The cases are infinitely better than the text-books because the text-books do not have the double point of view. I think most of our judges in this country and England, in the discussion of a case responding to a lawyer's argument, take two points of view, and I want my students to get into the habit of discussing from two points of view. The case method will give me that better than any other method.

I may be asked if I want the case method in the college. Of course I do. The better the method the more I want it in the undergraduate institution. It seems to me altogether beside the question to surrender the case method to a law school or to a graduate school. I can teach international law from the case method as effectively in the college as some one else can in the graduate school because it appeals to the intelligence of the critical audience.

Further than that, it seems to me that if these things that I have

already developed be true we do not want to pay very much attention to trying to teach our subject from the point of view of diplomacy. If I try that avenue of approach to the minds of my students I am apt to be led aside into the byways of history. I suppose if I were to present the thing from the point of view of diplomacy I would say to myself, this fact must go in, and if this fact then this fact, and before I know it my page is full of a bushel of facts; but it is not my function to teach facts and to teach history. I put too much of myself in the teaching, if I teach from the point of view of diplomacy. I cannot teach very much from treaties because treaties, while documents, are from entirely one point of view. You ask how about current events. I favor the point of approach from current events much more than that from the point of view of diplomacy, because if we can use current events we can assume a great deal in regard to history. We do not have to stop to teach it. We have no interest in trying to present any particular facts. If I assume from the morning paper a general knowledge of the setting, I can pick out a fact from a current event in diplomacy and international law with good effect.

If we teach from the cases and make our own text-book as we go, and use the ordinary text-book only from the desire to have a systematic treatment of principles which perhaps we may never refer to in the classroom, what shall we make our students do outside the casebook?

Last Christmas here in Washington Mr. Wilson said that he had what he called a clipping thesis. He would assign the relations between this country and France, let us say, to be developed by the student from the clippings which the student taking this subject could amass from February to June. Now, frankly, I think that is elegant for diplomacy. I am using it in a class in American diplomacy, but I do not see how it could be used in a course in international law where I am trying to develop fundamental principles. Rather than use the clipping thesis, therefore, in my course in international law in the small college, I would rather do what used to be done when I was in the Harvard graduate school; I would like to give just a certain principle and ask for its development. What a magnificent field, for instance, would be offered if we were to suggest the international aspect, the international law, on the whole question of the diplomacy of prohibition, or I might give the whole question of continuous voyage as applied in the late war.

Now, you see what I am trying to do is to ask you to get back to the point of view of the small college and remember what we are there for.

We are not there to teach any particular body of knowledge, and I think every one of us is saturated with a nervous interest in some particular body of knowledge which has arisen in our minds since the 1st of August, 1914. We have got to get out of that, and we have got to remember that the object of the small college is to teach the student how to think. To be sure we use a particular body of knowledge in order to make them think, but it is not our business to have them stop by the way and learn all the facts of this body of knowledge.

This is just an outline, Mr. Chairman, and I know that many of these things could be developed in further ways. I will leave that to the audience.

The CHAIRMAN. Mr. Fite's remarks are now open to discussion.

Professor J. EUGENE HARLEY. I think I will tell a little story before I say what I want to say.

A certain lady had a reputation in a small village for a love of children. She happened to be a spinster—not married—by the way, and her concrete sidewalk had just been laid the day before and the concrete was fresh. The next morning a small boy came down the road and he happened to step into the concrete and made two big footprints. Miss Smith came out and saw those footprints. Her neighbor, Mrs. Brown from across the street, came over after Miss Smith had scolded Johnny, and Mrs. Brown said, "Why, Miss Smith, I thought you liked children"; and Miss Smith replied, "Yes, I do in the abstract but not in the concrete." (*Laughter.*)

I think the case method of teaching international law, as we all would recognize, is for the purpose of making international law concrete; but, at the same time, going back into the first topic presented this morning, it seems to me that the wedge to be driven between international law and international organization or international policy involves a question of the .nterest of the student. We have not said very much this morning about the student's interest in the courses on international law and similar subjects, and I think the teacher of international law, in the average college and university, must be somewhat concerned with whether or not he is going to have a class. If he has two or three or four or five students, of course his particular subject will not be popularly regarded by the administration and he may be looking for another job.

I think we have got to be concerned with the interest that we create in our subjects among our students. That involves the question of clothing the dry-as-dust principles of international law with some

clothes—a discussion of current events, a discussion, perhaps, of the Monroe Doctrine; a discussion of any principles which can be related to international law in a permissible way and yet which will bring out the interest of the student.

In other words, you have got to tie up, it seems to me, the interest in the general field of international law and international diplomacy with the case work itself. I give a course in international organization separate from a course in international law, and in my course in international law I bring in certain features of international organization and certain features of foreign policy. I believe it is essential to retain the interest of the students, and in the course on international organization I deal with the World Court, the League of Nations, the Pan American Union, the Labor Organization of the League, the two Hague Conferences, and so forth.

I do not see any reason why, in a course on international law, we cannot do something with policy and with international organization. I do not see any use in going into a rut and making a student believe that international law is as dry as dust, that it is a set of principles that cannot be related to the social sciences and international policy.

Professor FRANCIS N. THORPE. I agree with Mr. Hudson, but it seems to me that our friend over there, who does not see anything in law except the covenant, is a little off. The status of the parties and the jurisdiction are fundamental in any interpretation of so-called international law, and the gentleman who gave us that admirable suggestion of a small college, presenting the subject of getting students to think—and the other man did not find enough students to think—leads me to say that that is not our business. Whether there is one student or one hundred students thinking, that has not anything to do with it.

International law is a mere interpretation of certain social relations in life. That is all it is. There is no sanction to it. You learned men who teach law in the law schools teach domestic law with a sanction behind it, but we cannot teach international law with a sanction behind it. Even our Austinians did not do that.

We have got to face the fact that we are talking about a great desirability. We are not talking about a sanction or a power and if I can get the gentlemen, and I happen to meet a good many in Pittsburgh, who are going to study law under the instruction of able men, I am going to do nothing more than to give them a point of view, a notion of status, or of jurisdiction.

What is the jurisdiction in international law? It is national; it is not international. International law is a set of rules; it is not law.

We are here talking about the great desire. We are not talking about the great fact. International law is the law of the strongest party, and our Constitution is the first document in history that recognizes international law as a part of domestic law. International law is a part of our constitutional law, and I do not agree at all with the gentleman who said that constitutional law should be divorced from international law. We have got to interpret in it national custom, so called, according to domestic precedent and national practice.

Professor GEORGE H. BLAKESLEE. It seems to me it all depends on the method of instruction. International law may be taught based primarily upon casebooks; then the law may be supplemented by a study of policy, diplomacy, organization, international ethics, without confusing what is law with what is not law.

As international law is taught at our University, the students are led, from the very opening day to the close, to differentiate between what is law and what is not law. I find that this may be done successfully by adopting various devices, one of which is to assign the students topics which force them to report that the law is so and so but that the policy which they personally approve is different. Another method is to manoeuver a student in the class discussion into a position where he has to say, "The law is such and such, but national policy is different and my own view of the proper course of conduct does not agree with either." In these ways, it seems to me, after you have gone through a year's course and have supplemented your law by an adequate study of international policy, diplomacy, international organization, and objective justice, if there be such a thing, the student does not have in his mind when he finishes the course any confusion between what is law and what is not law. It depends upon the method of instruction.

Professor HUDSON. What is law in that sense? Has it this definite content so that you can say definitely it is or it is not? I could not answer those questions, I am sure.

The CHAIRMAN. If there is no objection, we will allow the remaining two minutes to Mr. Blakeslee to answer that.

Professor BLAKESLEE. We take the most recent and most interesting decisions of the Supreme Court and consider that that is law.

Professor HUDSON. Then they must leave the thing very much in the air.

Professor EDWIN M. BORCHARD. Of ten men in a law faculty at one time, I believe you will find as much difference as to the definition of "law" as there are differences as to the definition of "international

law." If our Conference can contribute to the solution of that great question, What is international law, it will alone justify our meeting.

Professor GEORGE G. WILSON. Mr. Fite referred to the clipping thesis. Allow me to say that the clipping thesis is purely a graduate institution, and has nothing to do with the undergraduate courses. It is the laboratory in which the graduate student after prior preparation is at work.

I would like to ask two questions of my friend Mr. Harriman.

One is where he would put common law in his scheme, and the other is why the United States paid $25,000,000 to Colombia in connection with the Panama Canal episode?

The CHAIRMAN. Later we will ask to have the questions answered.

Professor JESSE S. REEVES. As long as certain interrogatories have been directed to Mr. Harriman, may I propose some others?

I will pass the question of the cobbler sticking to his last, and pass on to the question: Can he find any one who is not trained in what are, I think, the rigid methods of Anglo-American common law, any continental jurist, who would subscribe to his conclusion, any one on the continent of Europe who has that conception of international law?

Perhaps we are rather wrong if we push the casebook method too far. I am inclined to think that those who imbibe international law exclusively from casebooks get rather an Anglo-American notion of international law, in other words, the point of view of the immediate world we live in. In addition, we rather arrogate to ourselves a certain self-sufficiency, we who have the Anglo-American tradition and experience. If we are to join hands with and meet the minds of men abroad, we cannot subscribe either to the conclusions of Mr. Harriman or to the results gained from a narrow adhesion to the casebook method.

The CHAIRMAN. Is there any further discussion of this paper?

Professor GRAHAM H. STUART. It seems to me that there is no use in a group of this sort trying to thresh out too far the methods of teaching international law or constitutional law. If we are going to get anywhere, we must emphasize the subject-matter, and interest both the universities and the students in the question of international relations and international law. As was said by Mr. Quigley, I think we ought to allow the professor to choose his own way and to get the best results that he can, no matter how he approaches the subject. It is possible, I think, in the big universities to have the law school use the case method, while the elements are given in the political science department, as well as courses in international organization; and, above all, I find a course in foreign service to be most practical, because

to train a student for the foreign service requires instruction in the whole field. You can prove to the administration of the university that it is a good thing and you can sell it to the student. Whether he uses it later I do not think is material.

You are not going to convert any man here, from what I have seen, as to the best method of teaching international law, so why not concede that it can be approached by all these methods? We do want to approach it in as wide a way as possible and also to increase the interest in it to the point of making the student take it.

While studying under Louis Renault in Paris, I found he did not make use of the case method, and the course formerly given in the University of Wisconsin did not conform itself entirely to the case method; but, whether one prefers that method or not, it must be conceded that other methods are used extensively and successfully and no arguments on our part will change the fact.

(At this point several members sought recognition.)

The CHAIRMAN. Perhaps there is a little misunderstanding as to the rule I interpret the rule to mean that we will hear from everyone who wishes to speak before we hear from the same speaker twice. The purpose of that rule is partly to make us known to one another and partly to hear from some people who might not otherwise get a chance to speak.

The time for the third paper has come. After this paper has been read and after the discussion we shall open the general discussion on all three topics.

Before we open that discussion, with the permission of the Conference I will ask if Mr. Harriman is willing in three or four minutes to answer so many onslaughts.

After everybody has spoken, the discussion will be open for everybody to speak as many times as he wishes—not, however, as long as he may wish.

There has been a change in the printed program. Professor Wriston of Wesleyan University will speak on topic III.

THE RELATIVE EMPHASIS IN INSTRUCTION IN INTERNATIONAL LAW UPON THEORY, HISTORICAL DEVELOPMENT, INTERNATIONAL LAW AS A SYSTEM OF RULES AND PRINCIPLES, AND THE DEFECTS AND POSSIBLE IMPROVEMENT OF THE SYSTEM

Professor HENRY M. WRISTON. Mr. Chairman and ladies and gentlemen: I am glad that the Chairman announced my subject because I have only ten minutes, and if I had to read it, it would have taken a considerable part of my time.

As I understand the technique of opening a discussion, it is to demonstrate that one cannot afford to be dogmatic on the topic, and having demonstrated that, proceed to dogmatize sufficiently to give those who participate in the discussion something to shoot at.

I was much interested in some of the things said by Mr. Stuart and Mr. Fite. It must be remembered that the teachers of international law do not have uniform training, nor do they have uniform tastes and interests. It is a great deal better for a man to do what he does best than to attempt to do something according to a plan or program which he does not fully comprehend or which he may not be adequately prepared to carry out. The business of teaching is, after all, largely a process of intellectual stimulation and unless a teacher feels enthusiastic about what he is doing, and unless he is thoroughly capable of handling it, he cannot stimulate the minds of the students. What may be lost through a method something less than perfect, or an organization short of the ideal, may be gained in having the instructor follow a method which he has mastered and cover a field with which he is thoroughly familiar.

In the second place, we have to make a distinction, in the matter of emphasis, between courses given in law schools, courses given in colleges, and those in graduate schools. The emphasis in one might well be quite different from that in another. A man can speak only about the things that he knows. I cannot speak either from the point of view of the law school or the graduate school, except of the graduate school from a receptive point of view—doing one of those clipping theses which have entered our discussion. I shall speak only of the college.

Even when speaking of international law as a college subject, one must distinguish carefully between an "introductory" course and one which comes in the senior year. The whole technique of instruction and even the content of the course depends to some extent upon whether it is offered to sophomores who must undertake the course with less background, or whether it be a senior course the students in which have already had a great deal of diplomatic history and who can take the work only if they have a thorough groundwork in the history of American and European development. It is so clear as not to need argument that if one sought to do the same things under these two different circumstances, he would be no teacher. My own course is a course for seniors and can be taken only after a thoroughgoing preparation in history.

Having proven that no two of us can teach this just alike, I am going

to tell you how it should be done, for then that will give you a chance to disagree with me.

The college course must be designed for students who are not going to have any more legal training. Only a very small proportion of those who study international law in college are going into the foreign service or to law school or to the graduate schools. For most of the students this course is to constitute all that they are to know about international law. Its purpose must be not to make lawyers, but to develop an intelligent point of view about the legal phases of questions arising in the course of international relations.

With such a group, any heavy emphasis upon an historical introduction is virtually wasted effort. When you start with names which are familiar enough to us—like Pufendorf—it arouses only a smile in them. And if you take time enough to make Pufendorf a living reality and to clarify the distinctions between his point of view and that of some other man whose name is equally odd in the eyes and ears of the students, you are going to spend more time than can reasonably be justified.

The historical introduction, as I see it, therefore, ought to deal with what might be called the objective rather than the intellectual history of international law. That is, it should recount the history of international law as seen in conferences, in treaties, and in cases, rather than as revealed in the writings of individuals. To put it in a different way, the introduction should not be a discussion of the history of international law, but a discussion of the nature of the history of international law. It should be handled in a very broad spirit in order to bring out the character of the history of international law. You and I find the history of international law very interesting, but I remember that the history of international law was not always so interesting, and it seems to me that if you launch a student into this history which becomes interesting only after a long initiation, you are making a mistake.

The history of the law should be viewed also from a very wide angle. It should be developed largely by means of analogies with municipal law and a constant effort should be made to tie it in with other branches of knowledge. From the point of view of college instruction, that is a most important thing.

In like manner, theory should be put in a secondary position. There are certain points in theory that you cannot overlook, but there are others which can be relegated to other courses such as those in political science and political theory, and to courses in jurisprudence, if such

are offered. It is a great deal better that we study only what we have to, as a mere groundwork, and then go on to other things.

The fundamental question of definition must be faced sooner or later and the question whether international law is properly to be classed as law must be answered. To my way of thinking, the best way to deal with that is to discuss the matter briefly by way of introduction, at the beginning of the course, but to postpone the principal discussion of it until after the student has acquired data upon which he can make up his own mind whether it is properly to be called law. If you start in the beginning with a general statement but let him shape his own opinion, the active discussion of the problem comes best at the close of the course and is most fruitful in its results.

The main emphasis in such a course should be laid upon international law as a system of rules and principles. The structure of the course should be built about that idea. But having laid out the law in a systematic way, the approach to it should be an historical approach. Each rule should be explained in the light of its historical setting. My own experience is that when we discuss a rule of international law, the first reaction of the student is that the rule does not operate uniformly. It does not apply equally to great States and to small States. It is variable in its application according to circumstances. It is difficult for the student to have any respect for a rule of that character. Only when it is put in its historical setting is it possible for him to understand how so imperfect a rule is entitled to any respect.

The historical approach can be pursued along two lines. In the first place, the rule can be traced through the cases, taking them chronologically. In this phase you develop the juridical history of the rule. In the second place, the instances where the rule has been called in question and discussed by the political authorities of the State in the course of the conduct of diplomatic negotiations should be discussed. Thus you get what may be fairly called the political history of the rule. These two historical approaches converge upon each other until you get current practice.

Current practice may not be the law, but there is a word which has become familiar in my class from reading the book of one of the gentlemen here—"inchoate" law. That is one term I know they have learned this year; they know what inchoate law is.

This method has the further advantage in that it indicates the direction in which the law is developing. When you come to deal with the defects and the possibilities of improvement, the historical

development sets a guide-post pointing the way. The historical approach tends to cure the student of a naive confidence in the efficacy of legislative short-cuts. Immediately when you begin to teach international law, the student's response is: "Why can it not be improved by the legislative process? Why not codify international law, fill in the gaps, make it a rounded and logical system and then enforce it?" They are not troubled with questions of sovereignty. They are not to be delayed by mere matters of States' rights. They are not conscious of political inertia or of the deflecting forces of historical development, and want impatiently to deal with it in a very direct and simple manner. The historical approach to the rules of international law minimizes this inclination to seek for that type of codification and enforcement.

Of course the historical method should not be pursued to the exclusion of others. Mr. Hudson has already made that point sufficiently clear. It is essential to take into account the needs of world society and to seek to harmonize conflicting interests.

Finally, when you deal with the law in this systematic fashion it reveals, inevitably, the gaps. They show up in that scheme of organization a great deal more clearly than they do when one employs the case method exclusively. In fact, the employment of the case method tends to conceal the gaps. The body of definite law is perhaps made clearer, but the places where the law does not exist receive no emphasis. It is very difficult to make the idea stick in the minds of the students that there are whole areas which have not yet been dealt with in international law. Consequently the combination of a systematic approach with an historical method is, after all, the best for this purpose also.

If I may summarize, then, in one sentence what I would attempt to do in teaching a course in college, the only course the students are to have on this subject, I would say, "Make the organization systematic, the method historical, the point of view social, and the spirit critical." (*Applause.*)

The CHAIRMAN. Several questions have been asked. Messrs. Quigley, Potter and Harriman have all been asked questions. I think it would be well, perhaps, to defer for a few minutes the answering of these questions until we have completed the general statements; and, with your permission, we will have a few minutes more of the regular routine discussion and then we will take up these interesting questions that have been propounded to the above-named gentlemen.

Professor CHARLES E. MARTIN, University of California. Mr. Chairman, I take it that our first business and our real purpose is not so much to defend our different methods of instruction as to discuss them. We can learn much of method here. We do not seem to be able to get together on what international law is.

Several methods of teaching international law have been proposed. Too many methods for a single course will overwhelm the student. It should, in my opinion, be either a case course, or a course in current problems in international law, or a course in the general principles of international law. The remaining methods may be used to supplement the one which forms the basis of instruction. The history of international law teaching, and current practice has established the case method as the prevailing one. We must choose a method. The student will not use both a casebook and a book on principles, and at the same time follow the newspapers and current periodicals. The teacher must, therefore, determine the best method, follow it, and supplement it as much as possible with other methods.

I am much interested in Mr. Wilson's clipping thesis. While it is used only in a graduate course at Harvard, we have made use of this method in undergraduate, and even lower division courses. These courses include political theory, American government, and political parties. It seems to have great possibilities in international law and diplomacy. This is a practical question, and deserves further discussion. Mr. Wilson has spoken once, but merely to propound a question. I think it might be well for him to tell us about the clipping thesis. Not many of us heard his discussion at the December meetings of the American Political Science Association. This is a new method to me, a unique method, and is something the fraternity of international law teachers should know about. It has possibilities in undergraduate as well as graduate instruction.

I would not be understood as making a fetish of the case system. International law does not lend itself altogether to proper treatment through the case method alone. The British practice of using a few leading cases which are really declaratory of the law may be preferable to our American method of wholesale exposure to thousands of cases, some of which are good, many bad, and most of them indifferent. Moreover, it is possible for unintelligent men with a certain amount of mental quickness to conduct what seems to be a satisfactory course by use of the case system, without having, and certainly without imparting to the student, a comprehensive and well-ordered knowledge of the subject as a whole.

Professor S. GALE LOWRIE. Mr. Chairman, just before we entered the war an article by Sir Gilbert Murray was published in *The Atlantic Monthly*, in which he undertook to give the British point of view regarding matters of controversy between our Government and Great Britain. He observed that our Government, in trying to establish principles of international law, had to hark back to incidents which had occurred a hundred years before and try to rely upon principles which had been developed in the light of those incidents. When we recited these principles as present international law, the case was not as strong as it might be.

Now, I think there is in that point of view a certain indictment against the case method, particularly when it is used as a method very much akin to that used in teaching private law in our law schools. When we teach the case method in the law school we can find cases in municipal law which are almost flat-footed with the point we have in mind, and often we find a very recent decision. When we come to international law we sometimes have to go back to incidents which occurred some time before, when the facts of international life were very different from what they are at the present time. As has been said here, we are very likely to rely largely upon decisions in American courts or in British courts, and many of these decisions, as reported in the customary casebooks, are decisions where the real point at issue in the case was not a principle of international law, but the principle of international law recited in the casebook is incidental to a number of other points that come in the case. Then, too, the matter may have come before a judge who may not have had many cases of the sort. It may have been almost the first case of international law which occurred in his jurisdiction. Consequently, we not only get a national point of view but also the point of view of a judge who is not really learned in the point we have in mind.

Added to this is the fact that we are likely in the case system to adopt much the same method of teaching followed in the case system in municipal law, and are likely to become a little more dogmatic than the facts really warrant. I think there is a great deal to be said for the point made by the gentleman from California, that if we are to start with a case method and are to use a case method, a great deal of explanation is necessary to get the proper point of view. If we are to start with the text-book method, it is useful to have so far as possible concrete cases to illustrate the principles.

Professor ROBINSON. Mr. Chairman, it seems to me the very case he urges against the case method is one reason that we should use the

case method. It represents an actual incident, and the international law matter is apt to come up incidental thereto. Furthermore, it will be settled by somebody who has naturally some particular device if we are dealing with activities. That seems to be the method by which anybody would approach the subject. It seems to me what he says is not so much an indictment as a confirmation of the use of the case method.

Professor JAMES W. GARNER. Mr. Chairman, I want to emphasize the point that has been made by the last speaker, namely, that in teaching the case method, if it is relied upon entirely or preponderantly, you are in danger of giving the student a one-sided, national, view of what international law is.

Those who rely upon the case method, rarely, if ever, give any attention at all to cases other than those decided by the courts of the United States and England. Now there are other countries than the United States and England whose courts interpret international law. During the past year I have been reading prize courts' decisions of all countries where prize courts sat during the late war. There are more than a thousand decisions, most of which I have seen and many of which I have read.

One thing that impressed me very forcibly was the different point of view, the different interpretation of what international law is, what it requires, what it forbids, the relation between international law and national law, etc. The English and the American courts adopt one view on many of these questions. The continental courts adopt a different view. The question I want to raise is, is it fair, is it just to the student, to take the decisions of one or two countries and teach those decisions and tell the student that is the law of nations, when it is not the law which is actually interpreted and applied by the courts of other countries?

One of the cases that we all discuss is the *Zamora* case, in which the English judicial committee of the privy council held that orders in council contrary to international law are not binding in the prize court. But there is the *Zaanstroom* case, and others in which the German prize court laid down a different rule. So with many other decisions. It seems to me that where we take the cases of one or two countries and rely entirely upon them we are giving the student a national point of view.

Very few of us probably would agree with our friend Dr. Alvarez that there is a distinct body of American international law. Yet we go ahead and teach international law from the American decisions and

from the English decisions, and thereby endorse a theory with which most of us have little sympathy.

The CHAIRMAN. Mr. Hershey, you rose a moment ago.

Professor AMOS S. HERSHEY. I have never been successful in teaching international law mainly by the case method, although I have used it a good deal incidentally. By using this method too exclusively, you leave enormous gaps in your subject-matter that are not covered at all. Of course, you may say that that does not matter if your main object is intellectual discipline. But I do not believe it is possible to present the subject as a whole by this method. Take the topic of State servitudes, for example. You might give an extract from the North Atlantic Fisheries decision which would convey a very inadequate and probably erroneous view of the doctrine, and that is probably all that you would find in your casebook on servitudes.

By the case system you teach only parts of your subject. You leave enormous gaps, and you will present the Anglo-American view that is probably very one-sided, both from a juridical and historical point of view.

However, the time may come when we can teach international law or a considerable part of it by the case system, and that is when we shall have enough decisions of the Permanent Court of International Justice.

The CHAIRMAN. I will now call on Mr. Harriman to answer the questions previously asked.

Mr. HARRIMAN. Mr. Wilson's question was, What do I do with the common law? I start with a definition of law given by the most brilliant of American jurists, Oliver Wendell Holmes: "Law is a statement of the circumstances under which the public force will be brought to bear upon men through the courts." Now, the common law is a statement of those circumstances.

Professor HUDSON. Some of us may disagree.

Mr. HARRIMAN. The common law as obtained from a study of the decisions is approximately as complicated and as often confused as the statute law. I say further that there are points in questions of common law that give us more trouble than the statute of frauds. The common law and the statute law go to make up the municipal law. There is an American international law, but it is law only in the United States and it is that which the American courts apply to cases before them involving international relations. That is what may be called international law, what is called international law by the courts themselves.

Now, those rules vary in different countries, and it is quite true that you may find very different rules in different jurisdictions and, for a

complete study of international law, you need to study the decisions of other countries. You have got to go to the French courts and to the German courts.

The difficulty arises from the attempt to teach, as positive law, a set of rules which are not positive but comparative, which are simply taken from the decisions of different jurisdictions and, having been found to be uniform in those jurisdictions, are treated as positive rules of law instead of comparative.

The second question is, Why did the United States pay Colombia $25,000,000?

Now, really, to tell the truth, I do not know, and the trouble is that the people who do know won't tell. However, it does not seem to me to require a Sherlock Holmes or a congressional investigation for any one to guess why.

Now, Mr. Reeves had a question and I wish he would restate it.

Professor REEVES. It was, Could you find in any other country outside of either Great Britain or the United States anybody who would agree with our point of view as to what international law is?

Mr. HARRIMAN. Well, I feel tempted to quote a well-known professor in a New England college who wrote a book on political economy. He was asked what he thought of German economists and he said, "I have not read them but, after all, it makes no difference. If they agree with me, it would be superfluous; if they do not, they are wrong." (*Laughter.*)

I do know this, that the treatment of international law by many writers, both Anglo-Saxon and continental, is medieval and scholastic and based on pure assumptions.

The Anglo-Saxon idea of law is based on positive rules of some kind, acquired either from statutes or from a study of decisions. The continentalists have an idea of natural law and universal law and laws in the air, which have no meaning whatever to an Anglo-Saxon lawyer.

I was talking with a continental jurist about a crime, and I gave the definition we give, as being an offense against the sovereign. He said, "Oh, no." He had some moral idea of a crime, that it was something wrong that you ought not to do; but to a lawyer there is no conception of a crime except as an offense against the government. Something may be morally wrong, but it is not a crime except as it offends some government.

Modern science is based on facts; the continental theory of natural and universal law is not based on facts but on scholastic assumptions.

The CHAIRMAN. I call on Mr. Quigley to answer the questions which have been leveled at him.

Professor QUIGLEY. I think there was only one, and that was the question of what I meant by policy. Mr. Hudson inquired whether we meant international policy or national policy. It seems to me that you cannot really find international policies; you cannot very well find a world policy, so I do not see that that distinction is important. But I meant national policy.

The thing I was trying to emphasize is the danger of giving too much attention to that. I think the distinction made in the paper has been emphasized into a much greater division than I intended. I tried to guard it by suggesting that it would be necessary to take account of political attitudes in teaching case courses, and I want furthermore to say that I have been put in the wrong pew in this discussion. That paragraph with respect to the necessity of making international law distinctly positive was a quotation from a resolution of the 1914 Conference. I put that in to satisfy people like Mr. Hudson and I find he did not take it as I imagined law-school men would and I am very glad to find out that he did not.

The CHAIRMAN. I am going to call on Mr. Potter and then we will have the general discussion.

Professor POTTER. I do not know that the question of case method versus the text-book method was involved in the questions which were raised in connection with the few remarks I made earlier in the morning, but it seems to me that I would be missing an opportunity if I did not say that it seems to me that there is a very simple method of reconciling the conflicting views.

I am not sure that the student need be required to carry around both a book of principles and a casebook, but I feel that the method by which I had the privilege of beginning the study of international law was the ideal method in that it consisted of a text-book supplemented by reading the cases connected directly with the subject-matter treated in the various portions of the text-book and supplemented further by a study of cases the solutions to which were worked out from books of reference and from works on international law by writers not only of English and American extraction but by writers of all nationalities.

The questions raised directly were these, I believe—how I reconcile the remarks which I made with the little volume I have the responsibility of having written on the freedom of the seas, and how you can ex-

clude the subjects of international arbitration and international conferences from a course on international law.

With regard to the first, I would beg leave to quote the full title. The title is disproportionately long for the size of the book. It was not merely the freedom of the seas, but the freedom of the seas in history, law and politics. In other words, reference to the volume will show that those three subjects were kept distinct in the treatment, and that leads directly to the next question.

This is not a question, as I see it, of excluding from courses on international law all mention of international politics or of international organization or all mention of ethics or of economics. It is a question of doing what Mr. Blakeslee suggested, of insisting that the students distinguish between what is law and what is not law. I would say specifically that, as far as the treatment of arbitration and international conferences and that sort of thing in a course on international law is concerned, I would treat them in so far as the rules and principles relating to them or in so far as the practices in connection with them have crystallized into fixed rules. It is one thing to take a monograph on international conferences in which are reviewed ten or twelve international conferences which have been held in the past century and review the data there and then tell the student what is commonly done in the matter of holding international conferences, and it is another thing to try to say that the nations must or have a right to do this, that, or the other thing in holding conferences.

Similarly, in the case of arbitration, if you try to discuss rules of international law which state the fixed rights and duties of nations in regard to courts of arbitration, you are reduced to the proposition that no country has the right to make a demand for arbitration. The recourse to arbitration, in the absence of specific agreement, is voluntary, and the organization of the tribunal, the procedure and the obedience to the award flow from the agreement of the parties to submit. However, when you come to international organization, you are at liberty to describe the courts as they have been organized and to describe the procedure commonly followed even though you may not say that this mode of procedure has been followed so universally as to be crystallized into law.

The CHAIRMAN. You were asked to answer a question on the clipping thesis, Mr. Wilson.

Professor WILSON. Mr. Chairman, the clipping thesis is rather a simple proposition. After the students have knowledge of law, they

are required to take the daily material as it comes in the newspapers and put it in form, under the classification and lines of legal thought with which they have become familiar. After they have done that for six months they get an entirely new point of view, I think, in reading the daily papers. They gather an enormous mass of material of which they throw away nine-tenths when they come to actually putting the material together under the respective international headings. It is not required as any *sine qua non* in education, but it is a convenient method of trying out laboratory experiments.

Professor GEISER. Mr. Chairman, there may be others who are in my position, not specialists in international law, yet seeking it and being very much interested in it. I rise for information and rather to state my needs. Oberlin College has about a thousand students, and in my class in international law are between thirty and forty—thirty-six now. I use the case method in the first semester and it runs over into the second semester and over into international relations. I was very much interested in what Mr. Garner said. He suggested one of my difficulties. It seems to me that it is for you specialists here to furnish us with that material. Would it not be possible to get a casebook that gives us these different points? In teaching the case method I have used Scott and I have used Evans. They are both a little too large. It seems to me there is need for a casebook perhaps designed for one semester. Would it be possible to have one with the leading cases and then illustrate the different points that Mr. Garner has in mind?

Professor GARNER. May I have another word, Mr. Chairman? I want to reply to a remark that was thrown out by Mr. Harriman who I see has left the room. The effect of Mr. Harriman's remarks was that, after all, continental decisions are of no great value to American students of international law because those decisions are medieval and scholastic. I cannot agree with that statement. I have read a great many decisions of continental courts, and I venture to say that it would be far better for our students of international law if they had an opportunity to read more of those decisions instead of some of the decisions rendered by the English prize courts, particularly during the last war. I am thinking particularly about the decisions by the English prize courts to the effect that a British mortgagee of a British ship, the mortgage having been made long before the war began, a perfectly innocent business transaction, the kind which is now universal, that such a mortgagee has no right in a British prize court. Claimants

came there and said, "Now, taking mortgages on ships is the universal practice among shippers. It is one of the accepted ways by which the business of shipping is carried on today." They pleaded with Sir Samuel Evans to take a larger point of view, to recognize this change of practice which was unknown in Lord Stowell's day. Sir Samuel said, "I cannot do it. Lord Stowell decided a hundred years ago that a British holder of a lien on an enemy ship, or enemy cargo, has no right which a prize court can give effect to." In other words, he said that the matter was precluded by the dead hand of outworn precedent.

No continental court is bound by an iron-clad precedent of that sort. I believe if our students had an opportunity to read the decisions of other countries than England and the United States they would have a higher appreciation of international law or international justice than they ever get from reading a case like that of the prize court to which I refer.

The CHAIRMAN. The chair will recognize Mr. Hudson and after Mr. Hudson, Mr. Borchard. There will still be considerable time left for discussion because we do not have to adjourn until twelve o'clock.

Professor HUDSON. Mr. Chairman, I find my interest very much aroused by this discussion as to what we mean here by the case method of instruction in international law.

I come from a law school that is closely associated with the history of the case method of instruction in private law and in public law, but I think that the men in our law school who have helped to evolve the case system have different views as to what the case system is or as to how it should be used.

I am thoroughly in sympathy with what Mr. Garner has said about the content of a casebook on international law. At the present time we have three casebooks in more general use, Scott's cases, Evans' cases, and the casebook of Stowell and Munro. Now it happens at just the moment that some of us in the law schools are hoping that the casebook will come to contain a somewhat different kind of material. I think that private law is not to be gleaned solely from what the courts are saying, and I feel very certain that public law, and more particularly public international law, is not to be gleaned simply from what the courts are saying. Perhaps we are sorely in need of more casebooks. I think that the ideal would be that every teacher should teach from his own casebook. Perhaps distinctions ought to be drawn between casebooks that are to be used in colleges for the kind of course that Mr. Fite has described, and casebooks that are to be used in law schools where I feel quite certain his definition would not be acceptable.

But if we could agree that the casebooks in use ought to give material from various countries; if we could agree also that they should not be confined, as Mr. Stowell's casebook is not, to the decisions of courts, a very serious question still remains as to how we are to deal with the decisions of courts. I find myself in thorough sympathy with what Mr. Robinson has said here this morning. A decision of a court is not something that arrests the law; it is an incident in the development of law. It is not something that makes the principle announced by a judge, who, as has been well said, may not be a specialist in this matter. The judge gets his material, if he can, out of the briefs of the lawyers who are before him, and it is a mere chance who those lawyers may happen to be. If he cannot find his material in those briefs then he gets it out of the books that he happens to have at hand or that he happened to have studied when he was a young man.

The consequence is that a statement of principle is seldom to be taken at its face value even when it comes from a court. Mr. Blakeslee has spoken of the necessity of his students' saying exactly what the law is and exactly what it is not. It seems to me that involves a completely arrested view of the law. To me the law is not a set of fixed rules; it is always a process. I should like to know how the students of Clark University behave when they come to the *Sokoloff* case in the New York Court of Appeals. I should not be able to mark their statements, I am quite certain, on any theory that the law is a definite thing

It seems to me that we have to deal with decisions, in the law schools, at any rate. I do not know the problems in the colleges. But we have to deal with the setting in which the court has acted, and from that point of view I find it necessary in dealing with the cases in Dr. Scott's casebook to go to the original reports of the cases, to have my students go to the original reports, to have them know every other original contemporaneous report that was made of any case. When the process is over, if they do not throw the case out altogether as a case not dealing with international law, as they very frequently do with the cases in Dr. Scott's casebook, then they say that the court in these circumstances decided a certain thing. But I do hope very much that in the teaching of international law we shall get away, as I hope the law schools are getting away in their teaching of municipal law, from the notion that what the court said is a handing down of something which is bound to be true until some court under very different circumstances may say the contrary or something different. The decision of a court is to be used by us as merely an incident in the course of legal development.

I cannot agree that it is simply a historical point of view that we ought to put forward. I think it is much more than a historical point of view; I think it is definitely a social point of view that we ought to put forward, that we ought to have in the handling of these cases. In other words, I think our science of international law must undergo the same process that the science of the law of property is undergoing today, that the science of the law of corporations is undergoing today, that, as instanced in his recent article on "Government Liability for Tort," Mr. Borchard has shown that the science of constitutional law is undergoing today. It seems to me that it is a great mistake for us to refer to the case method, as it has been referred to here this morning, as something that simply involves the teaching of principles handed down by courts in particular cases.

Professor BORCHARD. I venture with some diffidence to ask you to consider my views, but I would like to express my own reaction to some of the things that have been said this morning.

I think it has been made clear that the demands upon a teacher of international law are enormous. He must have, it seems to me, the several points of view which Mr. Harriman has mentioned. He must be something of an historian. He must know something of diplomacy. He must have some of the elements of statesmanship, perhaps. He must have some of the elements of a moralist and humanitarian; and he must be a lawyer. I think all of those demands are made upon the teacher of international law, and necessarily not all of them can find their lodgment in one man, certainly not with an equal degree of satisfaction to the man or perhaps to his students

International law is, as Mr. Hudson has well said, a process. There is nothing written on a brass plate, and for that reason, I think, his thesis is perfectly sound that a case can never or very rarely represent the law. It is an incident in a process or structure. Now, for that continuing structure, we draw on all the sources—history, political science, and modern conceptions of social theory and policy. Necessarily the decisions of the courts are a very important factor in those rivulets that go to make up the stream of international law. But this very equipment that I think the teacher must have imposes the necessity of the critical faculty, from various points of view.

Now, if we are to overlook in these sources the decisions of the courts, approved and disapproved, we would be making a mistake. In fact, if you take the cases in the courts alone as constituting an exemplifica-

tion of the law, I can think of several cases in which gross errors were committed and even our Austinian sense of law would be violated.

Let me illustrate. Take the case of the *Kim*. A decision of Sir Samuel Evans points out that conditional contraband may be seized if you have extraneous evidence to show that it might reach the enemy destination. He wrote a very elaborate opinion. The opinion did not represent what the United States thought was the law nor what most students of international law thought was the law; yet it was printed in a casebook as the law. Ultimately, Great Britain paid damages to the United States, because we refused acquiescence in the court's misinterpretation of international law. It requires some background to deal with that case in a class.

Take the *Zamora* case. It would be necessary to point out that the doctrine adopted in that case was never applied, that whenever an opportunity came to apply it, it was not adopted. So far as the English prize courts are concerned, necessarily they are bound by municipal law and Orders in Council, even if these violate international law. But the British people, represented by a constitutional Executive, would, if the necessary representations were made by the foreign Government affected, be bound by international law. That would be the law of England.

Take the drafting of aliens. Now, if Mr. Harriman's view is entirely correct, then we should have drafted all of these aliens, for our courts said that they must be drafted because the statute so provided. But did we? We did not. The ambassadors of foreign countries, invoking international law and treaties, made representations to the United States Secretary of State, and the President, as commander-in-chief of the army, applying international law, released these aliens. It seems to me that the Secretary of State and the President were societal agents for the enforcement of international law, which thus became the municipal law of the United States for that case.

Of course, the very fact that we have so many differences of opinion here as to what international law is, and whether international law is law, shows how difficult the subject is.

When does a custom or practice become law? When, after a practice has long existed, and a treaty comes along and violates that practice, can you say that the old practice has been abolished, that it is no longer law, that the treaty is now international law? That presents the opportunity to have lawyers on both sides of these questions, one of whom

will seek to impress by the use of all these sources—history, political science, social theory, policy—that the rule adopted for these many years is a good and sound rule of law and that the treaty has not changed it. He will resort, perhaps, to the resolutions of scientific societies to show whether this is law or not.

On the other hand, a man interested in sustaining the treaty provision as general international law will seek to show that there is no such thing as international law except as a particular incident may disclose a rule of conduct or, perhaps, as one of the speakers has said this morning, that it is merely the law of the jungle.

That is a point of view, but it shows what a difficult subject this social science, this continuing process, really is, and how open-minded we ought to be in considering the contributions made by these various sources that have been mentioned; but the fact that they all are used and should be used in our courses only shows how strong and great the demands are upon the teacher of international law who really seeks to teach his subject intensively.

The casebook system, I believe, has not been regarded as an embodiment of the law or even of the process known as the law, but merely as one method of either teaching certain rules or, as Mr. Fite has said, of developing a process of reasoning on the part of the student. In fact, as I have suggested, many of these cases you would have to say are not law at all. They have been completely reversed by processes other than the courts, but they are a useful method of teaching. Necessarily they cannot cover a complete course.

What Mr. Harriman said concerning the different legal conceptions prevailing on the continent has a certain validity, because those who have been active in international bodies realize that there is a great deal of difference in the method of approach to the solution of a legal problem. For instance, take the question of jurisdiction. You are doubtless familiar with the decision of the Permanent Court of International Justice in the *Mavrommatis* case, wherein the continental jurists took a different view of jurisdiction from that of Lord Finley and John Bassett Moore. That is inevitable. It may afford some ground to those who wish to keep us out of the international court, for one reason or another, to say that we should not submit to a tribunal the views of which are so largely colored by continental training. For myself, I do not think that is a serious consideration, but it is nevertheless a fact that methods of legal approach do differ on the continent in some respects from ours. Not that ours are better by any means.

Their methods are more scientific; they go back as far as the Roman law; while we have picked up our law in a haphazard manner mostly through judicial decision. That gives one cause for hesitation in pronouncing our methods as superior.

But I do believe that the discussion this morning has shown us the many contributions that are made to the science that we profess to teach. I believe that no one of them should be overlooked and that the teacher in his function as a critic, in his exposition of the subject, must draw upon all these sources. That is an ideal of perfection which perhaps no one can reach, but I think it perhaps represents the standard at which we might aim.

Mr. HARRIMAN. Do I understand you to say that the violation of a statute by the Executive changes the law?

Professor BORCHARD. No. Possibly you are referring to my statement that a statute of the United States proclaims a certain rule which, while naturally binding upon the courts, may not be carried out by the Executive because it violates a treaty or international law. I can furnish a certain number of illustrations to show what the Executive can do. Take the three-mile limit Our Congress undertook to order ships seized twelve miles out, and we did so. The Executive then ordered such seizures to cease. I did not say "violation" of law, unless you call it so. That would be perhaps your term for what I have described as an adherence to the rule of international law for international reasons, rather than the following out of the statute of Congress which happens to violate international law. Now, in the case of these seizures the courts condemned most of these ships; but you will observe that the Secretary of the Treasury, acting on the request of the State Department, asked the executive officers no longer to make these seizures because we were getting into so many difficulties with foreign countries, who invoked international law, that it were better to hold off until we could conclude a treaty on this subject. So we did not ultimately enforce the rule of the statute, though that rule had been applied by the courts. The courts will not enforce international law when it is contrary to the statute, but the State Department, also a constitutional organ of our society, will enforce the rule of international law and has done so under such circumstances in many cases.

Mr. HARRIMAN. My question was whether the violation of the statute by the Executive changed the American law.

Professor BORCHARD. Yes. I beg to present my thesis on that.

I think so, for this reason: What is the rule of conduct that governs this civil society known as the United States *finally?* Was it not finally that we could not and would not seize these ships outside the three-mile limit?

Professor HUDSON. Not that we could not but that we would not.

Professor BORCHARD. We could physically, but if we did we would be doing the same thing as any other lawbreaker. But we could not do so legally, and therefore we would not do so, inasmuch as presumably we are observers of international law. We did not enforce this municipal rule which the statute had said we should act upon.

That seems to me to make the international rule the rule of civil society in this community known as the United States. That is my thesis on that subject. I think the rule of international law prevails in the final jurisdiction over the rule of municipal law which only prevails in the courts.

Professor HUDSON. May I ask whether the statute antedated the seizure outside of what you call the limit? If not, then surely there was no policy.

Professor BORCHARD. The statute did say that up to twelve miles revenue cutters may exercise police jurisdiction. That made it legal in the courts but not for the people of the United States, because they were bound by a higher rule of law, and the Secretary of State, as a societal agent for the enforcement of international law, enforced the higher rule.

Professor QUINCY WRIGHT. The conclusion you can draw from that is very pertinent here. I should agree with Mr. Borchard's statement that the incident he cited showed that the United States regards itself as bound by international law. I think the incident also gives very good evidence that international law as enunciated by national statutes and courts may be colored to some extent, and, therefore, that if we confine our attention solely to national statutes and court opinions we will not get a very good impression of what international law really is.

Mr. Harriman referred to a definition of law by Justice Holmes, as the conditions and circumstances under which the force of the State can be brought to bear. As I recall, Justice Holmes gave another definition of law which comes to about the same thing, that the law is the means by which we prophesy how courts will act.

Now, if one attempts to prophesy how the courts of the United States will act, solely by a study of international law, he is likely to be

mistaken. Certainly a person interested primarily in prophesying how the courts of the United States will act had better direct his researches to a different field. If we applied the Holmes definition, international law would be a means of prophesying how an *international* court will act. I think perhaps we can accept that definition of international law. One could not always prophesy with extreme accuracy, but a good student of international law might make a better guess than anyone else.

Professor HUDSON. May I ask if it is not true that Justice Holmes gave those two definitions twenty-seven years ago, and that in the intervening twenty-seven years he has been proceeding on a different theory?

Professor FITE I have been trying to sum this discussion up, and here is my conclusion, and I think we ought to adopt it. There is no such thing as international law anywhere; it is international custom. If we adopt that phrase, then a good deal of our confusion is done away with.

Professor REEVES. May I illustrate with a well-known case, along the lines Mr. Borchard has suggested, and perhaps in answer to Mr. Fite. You will remember the case of the steamer *La Jeune Eugénie.* Now, in that case, you will remember that the schooner was condemned and seized by an American naval officer on the high seas on the ground that it was engaged in the slave trade and had committed an act of piracy, and Justice Story drew upon the law of nature, and in Evans' casebook it is introduced to show as the nature of international law, the law of nature ingredient that comes into it. Story condemned that schooner, but afterwards the United States paid France the value of the schooner on the basis of its being a seizure illegal in international law.

Now, of course, Evans selected that case to show that the law of nature is an ingredient of international law. But nevertheless we must look to the ultimate agency, a commission not connected with the Franco-American Claims, to get the ultimate statement of the law there. The decision of Story was municipal law, only it was reversed by an international tribunal. The doctrine was wrong and the ultimate expression of the legal right and duty of the United States was in the payment of so many thousands of dollars to France for the illegal seizure of the schooner.

The CHAIRMAN. If you will permit me, the time for the discussion is drawing very near to an end.

I suggest to those of you who have made up your minds what com-

mittees you would like to be on, that you leave your names here as you go out.

If you will permit me, I should like to say just one word on this matter of whether international law is law. I like what Mr. Harriman had to say, although I do not agree with all of it. I think there is not any law unless it is enforced. I think that law is obeyed, as Mr. Root put it in the meeting of the Society of International Law, more than it has ever been obeyed before, because of the sentiment of the community, because of public opinion; but if the evil-doer were not deterred by the fear of punishment, he would disregard the law, and then the well-doer, the law-abiding citizen, would find it also not worth his while to obey the law.

I think our troubles in international law largely are due to our definition of sovereignty. Mr. Garner, in his presidential address at the meeting of the American Political Science Association, gave a remarkable exposition of the law of sovereignty.

Now, if you wish to see how international law is enforced, you must regard the individual. It is a fiction to talk about States alone being the subjects of international law. International law is law mainly because it is enforced upon the individual. How is it enforced? Sometimes negatively by the Secretary of State; sometimes positively by the courts.

In this country we think we have no administrative law because the same courts that enforce our other law enforce administrative law. The individual is obliged to obey the law because his own courts make him do so. If the alien in entering the country does not receive the treatment that he should, his country interposes diplomatically to secure respect for his international law rights; but, after all, his State is primarily an agency of the collective group of individuals to see that justice is done its members. If we get that point of view, we are able to understand the law as it is.

Just permit me to say one thing on the matter of the difference between law and policy. When you apply international law, you have to pick out a system that will meet the needs of international application. The nations are organized on a competitive basis. Their principal desires are to compete with one another. They used to do it by war, and now they have got down to economic warfare, and in so doing, they have limited that competition only in so far as they find it advantageous in order to permit them a still more effective competition. That is the real truth.

In this competition—in the carrying it on—the nations administer the law in their own case and seek redress themselves for the injuries done to them and their nationals just as individuals used to do in the early history of our national law. In saying this I am taking the point of view of the nations as the subjects of international law, although they are mainly agencies of enforcement. The governments of the States acting for the collectivity first determine what the law is. They then apply the law in their own case, and by so doing have an opportunity to deform it in conformity with their own national policies. Policy and law thus become so mixed up that, as President Wilson said about the League of Nations covenant and the Treaty of Versailles, we cannot get one without the other; but in each case it is possible afterwards to analyze and discover what was law and what was policy. The situation is similar in our national or municipal law. In many States they elect the attorney-general because they wish to be sure that he will put the kind of policy in the law they want and that it will stick. Even when the attorney-general is not elected, he is appointed by an official responsive to popular will.

Professor HERBERT F. WRIGHT It might not be entirely out of place to call the attention of the Conference to the fact that international law is an integral part of municipal law by the constitutions of both Germany and Austria and, if I am not mistaken, it is my recollection that it has been so held by the Supreme Court of the United States.

Professor GEORGE E. CATLIN. I doubt whether a sufficiently clear distinction has been made between historical *policy* and *political science.* International law should certainly be taught against the background of social and political science. But international law should not be taught from the partial angle of a national policy. That is not to say that we should divorce exposition of principles from an account of their genesis and from the history of international policy.

The CHAIRMAN. We have had a very interesting discussion of these questions. There is time for one more.

Mr. EUGENE E. MONTGOMERY. It has seemed to me, as I have been sitting here, that the way we have approached the problem of international law is by means of rights and policy, very much the way they approached jurisprudence about fifty years ago before approaching the science of law as we do today. The way some persons approach the municipal problem today is by looking in the first instance at the claims of the different people.—Look at the claims of the particular parties

and then recognize certain claims, and then, after those claims become interests, generalize those interests into social interests, and then balance these interests and come to a conclusion which you call rights, and have very definitely an end in view when you do this.

I have often wondered—I am a youngster here—if it would not be possible in international law for us to get away from a theory of natural rights, and to start in from a different technique, giving effect to the claims of the different nations of the world. By this approach, you would probably come to a conclusion which would be more satisfactory to the people of the world. That is merely a suggestion.

Another thing. It seems that we do not have in mind the end in view when we deal with an international problem. As a youngster it seems to me that the end which we must have in view in dealing with an international problem is the keeping of the peace of the world, and the way is in process of limitation, and if you start back at the time of Grotius and bring it up to the present time you see that international law has proceeded by the recognition of claims of the various nations and with this particular end in view.

The CHAIRMAN. If there is no further discussion, we will now adjourn until 2 o'clock.

(Whereupon, at 11.50 o'clock p.m., a recess was taken until 2 o'clock.)

SECOND SESSION

Thursday, April 23, 1925, at 2 o'clock p. m.

ROUND TABLE CONFERENCE ON PROBLEMS OF RESEARCH IN INTERNATIONAL LAW AND RELATED SUBJECTS

The Conference met, pursuant to adjournment, at 2 o'clock p. m., with Professor PHILIP MARSHALL BROWN of Princeton University presiding.

The CHAIRMAN. Gentlemen, the first topic this afternoon is—

THE IMPORTANCE AND AVAILABILITY OF TREATIES, OF CASES, STATUTES, AND STATE PAPERS FROM FOREIGN COUNTRIES, AND OF THE VARIOUS RECORDS AND REPORTS OF INTERNATIONAL ORGANIZATIONS

The discussion will be opened by Professor Quincy Wright of the University of Chicago.

Professor WRIGHT. Mr. Chairman, in dealing with this subject of the importance of sources I want to first emphasize what I understand a source of international law to be. It seems to me that international law resides largely in its sources; that it is the sources which give solidity to it. International law is not a philosophy, so much as it is a body of concrete materials by reference to which governments can authoritatively criticize each other's conduct.

It is possible for the citizen to criticize the conduct of his own government or of some other government by study in a number of different directions. For instance, a person might read the *New York Nation*, and he would find a basis from which he could probably offer criticisms of other governments, and particularly of the United States Government, with great freedom; or he might read the *Chicago Tribune* and he would find there a source from which he could criticize other governments particularly, not so much this government. However, international law, it seems to me, has the aim of bringing together a body of sources from the study of which we can determine how governments actually do criticize each other's conduct.

The study of international law consists mainly of a knowledge of what these sources are and how to use them. That is the reason why

I particularly object to the view of some that international law should be studied only through national cases or national documents of other types. If you read that type of thing you do not get very much more information as to how other governments are going to criticize the conduct of your own than you would perhaps from reading the *New York Nation* or the *Chicago Tribune*. They are not, in other words, international law; they are simply the view of international law which is expressed by a certain limited group of persons and tribunals.

If you want to know what international law is, you have to look over a wide variety of accepted sources on the particular subject and make a balanced judgment on the basis of all of them There is no single, absolute, final authority which you can use as a source of international law. The very essence of international law consists in withholding judgment until a variety of sources have been consulted.

I can perhaps emphasize the importance of sources by considering, what seem to me, the reasons for instruction in international law. I suppose that in the colleges, one of the main reasons for giving courses in international law is that which was suggested by Mr. Root in an address which he made at the opening of the American Society of International Law nearly two decades ago. His subject was "The Need of Popular Understanding of International Law." I am going to read a paragraph from that address printed in *The American Journal of International Law* in 1907. He says:

> One of the chief obstacles to the peaceable adjustment of international controversies is the fact that the negotiator or arbitrator who yields any part of the extreme claims of his own country and concedes the reasonableness of any argument of the other side is quite likely to be violently condemned by great numbers of his own countrymen who have never taken the pains to make themselves familiar with the merits of the controversy or have considered only the arguments on their own side.

If you teach international law only from national documents, far from remedying the situation which Mr. Root deplores, you will extend it. If you want to know how other nations are going to judge the conduct of your own, you have got to make use of a much wider variety of sources than merely national decisions and legislation.

That seems to me the first purpose of teaching international law: to aid in the formation of a sound public opinion, to give the student the idea that there really is a solid body of doctrine and of sources on the basis of which governments actually do criticize each other's

conduct, and consequently to prevent biased opinions. In teaching we ought to present that body of sources accurately, as it is used throughout the world.

I suppose the second object in teaching international law is to give the student an introduction to methods of legal reasoning. It is possible that international law is not so good as some other courses for that purpose, but I suppose, as our instruction is organized, international law is more widely given in colleges than any other branch of law, and I think international law does have some advantages as an introduction to the method of legal reasoning, because of the greater diversity of its sources. A student should be taught to cull the precedents and reasoning bearing on a given set of facts from all the sources available, to discover for himself general principles from this material and then to apply them to his set of facts. That, of course, involves the use of actual sources of international law.

The third reason for giving instruction in international law is, I presume, professional. There are some students that have the ultimate aim of practicing international law in courts or before claims commissions or of going into the diplomatic service. In such cases a knowledge of international law is, of course, fundamental. There is not such a very large proportion of students that have this intention; but there is a value, I think, in making all students acquainted with the habits of mind which prevail in the various professions, and as the professions of foreign service and advocacy in international cases are of some importance, the student may well be introduced to the materials and methods which are actually utilized by persons in those professions.

From all of these standpoints a knowledge of the sources of international law which really do prevail throughout the world is extremely important.

I will now take up the types of sources which we have. The first is treaties. There has been an interesting development in the importance of treaties as a source of international law. I was recently reviewing the eighth edition of Hall's *International Law*, and I was forcibly struck by the importance which efforts at codification through treaties have had since Hall's own final edition was published in 1894. Since that time we have had the Hague conventions, the conventions which have proceeded from various special conferences under the auspices of the League of Nations, such as the Conference on Freedom of Transit, the treaties which issued, but were never ratified, from the

London Naval Conference, and the treaties of the Washington Conference. All are important and should be available, and, I think, they generally are, to students of international law. But you will permit me to emphasize the importance that the instructor point out that treaties as a matter of law are binding only when ratified. He must also emphasize the difference between the legal obligation of a treaty as between those States that have ratified and those that have not.

As this type of material increases it becomes more and more difficult to make it all available. Now every year or more frequently there is a conference which introduces important legislation in the international field through the League of Nations. This material is not as readily available as it should be. I presume that most of the larger libraries contain the League treaty series and official League documents. I think, however, it would be useful if this type of convention which codifies international law could be brought together and put in more convenient form for the use of teachers and students of international law.

I believe there is a proposal before the World Peace Foundation of Boston whereby more current material can be made available than is now by that extremely useful organization.

A second type of material is cases. As I have emphasized before, I think cases must be used with extreme caution, particularly national cases. From my point of view an exclusive use of cases from one jurisdiction is very unfortunate. We ought to use international cases more than national cases. Cases from the Permanent Court of International Justice should be used to a larger extent than cases from any national jurisdiction. Arbitration cases, I think, should be used to a considerable extent, though we must always recognize that in arbitration decisions considerations other than law are likely to play a part.

With regard to the availability of international cases, I do not think the situation is wholly satisfactory. The Permanent Court of International Justice publishes its decisions in a regular series. I hope that that series is available in all of the colleges and universities. It can be procured, I believe, at comparatively small expense, so that is a source which should be open to the use of even the most elementary students of international law.

Arbitration cases are often more difficult to obtain. *The American Journal of International Law* publishes the more important. I think there is room for a compilation of arbitration cases in addition to Wilson's and Scott's Hague Court cases and Moore's compilation of arbitration cases in which the United States has been a party.

When we come to decisions of national courts we have used mainly English and American decisions.

The decisions of continental European courts, because of the want of familiarity of our jurists with the collections and the difference in the jurisprudence and procedure which prevails, are not generally available. I might also mention the language difficulty. I am sure it would be extremely valuable for the teacher of international law and for the student if there could be an annual or semi-annual publication of important decisions bearing on international law of European and Oriental courts. Those are not available. I do not think there is anything that would be more useful for the promotion of the study of international law.

I may say that it would relieve the situation somewhat if the publishers and editors of the casebooks would make a larger use of European decisions. I presume they have not done so because they have not studied the whole field and do not feel able to make the proper choice. It would be very useful, however, if we could get some casebooks with a just proportion between American cases, English cases, French cases, German cases, Italian cases and international cases. Such a publication would be most welcome.

Now we come to diplomatic correspondence. No one can question that diplomatic correspondence is a very important source of international law, perhaps even more important than the decisions of national courts. Diplomatic correspondence is in the main difficult for the elementary student to get at. Correspondence which deals with a particular issue is likely to be lost in a mass of other material. For American diplomatic correspondence, of course, we have Moore's *Digest*. If we had a Moore's *Digest* for every country it would be very valuable. I do not know just how, until other governments take it up, we can supply this want, unless the teachers try to familiarize the student with collections, such as *British and Foreign State Papers*, *Archives Diplomatiques*, *Staatsarchives* and other collections of diplomatic correspondence. The language difficulty as well as the expense of the collections makes this impossible in most places.

The final source and one which the students must rely on to a large extent are the text-books. There again, the importance of utilizing text-books of various nationalities cannot be overemphasized. I should encourage the student to the very greatest extent to look into Bonfils and Ullmann, as well as into Hall and Westlake and Wheaton. If we had more translations into English of the various text-books on international law I think it would be a good thing.

Now, I have gone over some of the sources, and I imagine you think that it presents such an array that no elementary student could be expected to be familiar with much of it. It is a difficult problem. I do not think, however, that it is impossible. The way in which I utilize these sources is to have them all on open shelves, to have as many text-books as I can, half a hundred or more, on open shelves, and have the leading collections of treaties and of diplomatic correspondence and such case collections as there are all available. Begin your course by telling the student that, "Here in this section in the reading room you will find sources on international law." Then give them a hypothetical case and tell them to go through as much of this material as they can. It is astonishing how much many of them will go over.

I think that is the only way in which you can get the student really familiar with the sources, and I do not see how you can teach international law except by making the student familiar with the sources. That seems to me to be the major thing, to get them acquainted with the actual sources which there are and which are used by statesmen and diplomats all over the world. They cannot do it unless they actually handle the books, and the only way you can get them to handle the books is to give them a specific point and tell them to find out what all these books say about it.

The CHAIRMAN. Following the precedents of this morning, we will have a few minutes for discussion of this topic, say twelve minutes, and then we will proceed to the next paper with a similar arrangement and then have general discussion on all three when we have finished with these main topics.

I will ask each speaker kindly to limit himself very briefly, to three or five minutes at the most, and to be good enough to indicate his name and institution so that we may all feel on a more friendly and intimate basis.

Professor KENNETH COLEGROVE. I am glad that Mr. Wright emphasized the need of giving students in our colleges access to sources other than casebooks, perhaps even having special libraries that the students may have easy access to primary as well as secondary material. Students have very little idea of the amount of material in the field of international law, to say nothing of the correlation of this material in the collection. Perhaps the best method of introducing students to these sources is to persuade the librarian of the college to give a section or alcove to the collection on international law. Work in such a collection will give the student some impression of the extent of the subject even if he goes no further than looking at the backs of the books.

Now, in the matter of the sources, Mr. Wright indicated that there are certain gaps which it would be very profitable to fill. One particular gap, I believe, concerns the treaties of the United States. Malloy's *Treaties* now has a third volume added to it, edited very ably by Mr. Denys Myers, and a great improvement on the first two volumes. But, unfortunately, volume 1 is now out of print, and the library which lacks this volume will find it impossible to secure a complete set from the Government Printing Office.

Here is an opportunity for the government to promote scholarship as well as to serve a practical purpose. Why not edit a new edition of Malloy, including more foot-notes than Malloy employed? We need for the study of both diplomacy and international law something in addition to the mere text of the United States treaties; we need something like what Mr. MacMurray did for Chinese treaties.

Mr. DENYS P. MYERS. Relative to treaties, I think it is very important to try to determine when a treaty is international law. The difficulty has been very great in the past, but now, with centralized machinery, it is very easy to determine ratifications. The League of Nations issues a report each year to the Assembly on the work of the Council, and in the third part of that annual is a report on the ratifications of treaties that have been made under the auspices of the League. I was curious about the first of the year to count up the ratifications that had been made, and I find that in about five years something like 985 ratifications had been made.

Now, the significance of that has a direct bearing upon the relation of those treaties to international law because, if an international treaty is ratified by only two or three States, it occupies a different position than if it were ratified by twenty-five or thirty or forty or fifty. The ability to determine ratifications, and the effect of a ratified treaty on States in general, are things that I think always have to be taken into consideration.

Another source is the American Treaty Series. That Treaty Series is practically unavailable to the American teacher. As you know, the Department of State, in about 1905, numbered up all of the treaties and began publishing them in pamphlet form, each with a number. They are issued by the Department of State, with limited funds, in a very limited edition. It is very difficult for the outsider to get hold of them because the Department has to conserve its stock of them for official uses, for the most part.

Now, if this Conference could pass a resolution asking that the Treaty Series of the United States be placed on sale with the Super-

intendent of Documents, so that any library, so that any teacher, and so that any student, for the matter of that, could, by making a proper subscription, receive the treaties to which the United States has recently become a party, one considerable source would be made immediately available. The British Government issues a treaty series that differs from ours only in that it is numbered by the year rather than in a consecutive enumeration. Those treaties are very easily obtained through the British Government because they are regularly put on sale. It affords another perfectly acceptable series of international treaties which can be obtained without great cost.

Professor STOWELL. Mr. Chairman, I am very much interested in what Mr. Myers said, and also in the paper which has been read.

I have lately been making some investigations in the State Department and, without any assurance that anything of the kind would be possible, for I have not even talked it over at the Department, it struck me, as Mr. Myers was speaking, that another source of material would be the communications that are made to the press. They have now a very developed system of giving a résumé to the press which is used by all the correspondents who interview the Secretary of State every morning.

If some method of cooperation with the Department of State could be found in regard to this matter as well as the distribution of treaties, press communications or all of these résumés and all treaties could be mailed to the institutions interested in studying international affairs. This would prove of very great assistance to teachers and students of international relations.

If I may speak on another very closely related topic, it has been borne upon me that under the present policy that prevails at the Department—for they have a very broad-minded and able chief in charge of the Division of Publications, from what I see, there is a willingness to make available for all scholars the diplomatic correspondence—some way might perhaps be found for cooperative action amongst scholars for a systematic study of the diplomatic correspondence prior to the year 1861, when an annual publication was first initiated by Secretary Seward. In this way many obscure and slightly known portions in our diplomacy would be brought to light.

Something of that kind might, perhaps, be arranged, if this Conference would adopt a resolution with this end in view.

Professor ANDREWS. It just occurs to me that the suggestion of Mr. Myers might be referred to Committee No. 1 for such action as

it sees fit. It seems to me that that would give us an opportunity to go on record, and that that would be the appropriate committee. I so move.

The CHAIRMAN. I take it that no motion is necessary. The members of the different committees are taking notes on all of these points and there will be an opportunity later to make formal resolutions.

Professor HUDSON. I think we ought to recognize the backwardness of our government in connection with this matter. We are certainly very far behind the British Government in the publication of our treaties and our diplomatic correspondence. I should go further than Mr. Stowell and hope that our government would establish a publication giving our diplomatic correspondence which is made public at the time. It seems to me that we are all having to combat difficulties that are wholly unnecessary. It is impossible for one of us to get the Treaty Series of the United States in any regular way. The truth of the matter is that the Department of State has been starved for appropriations, and I should greatly like to see us launch a movement that would put the Department in a way so that it may at least come up to the British Government with respect to the publication both of treaties and of diplomatic correspondence.

I was rather surprised that Mr. Wright did not mention the League of Nations Treaty Series as the great source of treaty law today. Thirty volumes of that Series have already been published, containing almost 800 current treaties. We have today a means of knowing the treaty law of the world, which we have never had before, and I very much hope that the Government of the United States may find some way, as I have suggested in an article in *The American Journal of International Law*, of registering American treaties with the Secretary General of the League, in order that they may be included in the League of Nations Treaty Series. Most of our treaties are now registered by the other governments that are parties, and are to be found there. The Treaty Series is made easily available, even to institutions that cannot afford to buy it, and I think there ought to be one single publication of the current treaty law of the world.

The movement for such a series was launched in 1894 at a conference in Switzerland. It has come to fruition in the publication of the League of Nations Treaty Series, and I can see no reason why all of the treaties of the United States should not be published in that volume even though they are made with States that are not members

of the League of Nations, all of our treaties that are made with members of the League of Nations being published in it today.

The CHAIRMAN. I would suggest that we postpone any further remarks on this topic until the general discussion, in order that we may hear the other two topics presented and not unfairly trespass on the time of the gentlemen who have been good enough to prepare their remarks.

We will now listen to the second topic, the organization of comparative studies in international law, based upon the law and practice of different countries, and the encouragement of such studies to provide possible bases for codification or general treaties.

I think that you will agree with me that few persons are better qualified to speak on this topic than the author of *The Diplomatic Protection of Citizens Abroad*, Mr. Borchard of Yale.

THE ORGANIZATION OF COMPARATIVE STUDIES IN INTERNATIONAL LAW, BASED UPON THE LAW AND PRACTICE OF DIFFERENT COUNTRIES, AND THE ENCOURAGEMENT OF SUCH STUDIES TO PROVIDE POSSIBLE BASES FOR CODIFICATION

Professor EDWIN M. BORCHARD. Our discussions this morning were confined largely to the problems of teaching and the teacher-student point of view. The paper that I have undertaken to prepare is confined more to the problems of the research investigator who would mostly be the teacher or the graduate student or the person working in the interests of the State Department in preparation for a particular piece of official work.

Perhaps it may be well to begin the discussion of this topic by classifying, with brief comments, some of the prevailing conceptions of international law. This may aid us in determining what the topic assigned means or may be intended to mean and to what extent the pursuit of research in these departments of the subject falls within the jurisdiction of the student of international law.

1. International law in the sense of a universal system acknowledged and normally practised by all civilized countries. Perhaps this system alone is properly designated as international law. It is binding upon all States, with or without their consent. It is directly opposed to the conception of a so-called "American international law," "European international law," or any other regional classification, which would indeed, if established in fact, tend to destroy the system that Grotius expounded. Probably we shall never realize the prophecy of the great

Roman jurist: *Non erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et apud omnes gentes, et omni tempori, una eademque.* In the field of international law now under discussion, comparative studies would consist of an investigation of original and secondary material to determine its agreement with or divergence from the universal system and the extent of its contribution from the many rivulets of practice, official and unofficial opinion, treaties and decisions of international and municipal courts, to the main stream of the universal system.

This does not exclude emphasis upon rules of law or problems which may be more important to some countries than to others. But it is important to avoid the temptation to undermine international law by considering it as regional or national. It will be observed that Moore's celebrated *Digest* is called *Digest of International Law.*

2. Inter-statal law. Two or more States may, between or among themselves, adopt a treaty or rule of law which they regard as binding upon them. This may not be international law in the universal sense, and perhaps it would be well not to consider it so even in a limited sense. Yet municipal lawyers often refer to it as international law, because the treaty or rule affects to some extent the international relations of their country. It is more directly, perhaps, though not less effectively, municipal law than the type of law mentioned under heading 1. Many subjects that we study under the head of international law, such as extradition, dual nationality, international waters, fall properly in this department. So long as sovereignty remains an underlying conception of State existence, it will be nearly impossible to obtain universality of agreement in many branches of inter-state cooperation, which as heretofore will have to depend on special bilateral or multilateral treaties or agreements, based on reciprocity or some other consideration. The sources of the law here under discussion are to be found mainly in treaties, statutes, decisions, and particular State practice.

3. Municipal law, uniform or otherwise, relating to questions affecting foreign relations. To this field of law, we also find assigned the name of international law. It is essentially of course a branch of municipal law, involving such subjects as aliens, citizenship, naturalization, expatriation, immigration. It has important international aspects, because a conflict in the municipal law of two or more countries gives rise to questions which trouble the Foreign Office. Even some departments of international law proper have a phase, wholly or

partly municipal in this sense, such as neutrality, in which municipal statutes or rules may far exceed the requirements of international law, as is the case in the United States.

It is this aspect of so-called international law that the framer of the topic doubtless had in mind, though it might more preferably be called comparative municipal law in its inter-statal or international aspects. It embraces perhaps the entire field of conflict of laws or what is called on the continent private international law. Among the States of the United States, the work of the Commissioners on Uniform State Laws most closely resembles the function probably contemplated by the framer of the topic. It is useful work of great importance to the efficient conduct of international relations, and the preliminary step to the achievement of the task of comparison and codification consists in a knowledge of the municipal law of several countries in the particular subject under examination.

I shall not undertake to discuss a fourth aspect of what has sometimes been erroneously called international law, involving such topics as the Monroe Doctrine and parts of the subject of intervention. These I consider more properly assigned to the field of international politics or relations and not law.

Taking up the organization of research along comparative lines in the three classes of law mentioned above it is obvious that the student must have available the primary and the secondary sources of law, international and municipal. He will need in the international field collections of treaties, decisions of international tribunals, collections of the reports of ministers of foreign affairs, the reports of international conferences, and treatises and periodicals devoted to international law, including the transactions and proceedings of learned societies, such as the Institute of International Law, the International Law Association, Grotius Society, etc. In the municipal field, he will need statutes and executive decrees, parliamentary or congressional documents, decisions of municipal courts, including prize courts, encyclopedias of law, treatises on law and related subjects, legal periodicals and research books, like digests and citators, which make this vast body of material available to the investigator.

In the United States, there are only a few libraries which afford much opportunity for concentrated research of the type under consideration. The principal depositories of the materials in question are, I believe, the Library of Congress, the Harvard Law Library, the New York Bar Association Library, and the law libraries at North-

western, Yale and Columbia. In Europe, the principal libraries are at the *Société de Législation Comparée*, in Paris, at the British Museum and Inns of Court in London, at the Supreme Court libraries in Leipzig and in Brussels and at the Ministry of Justice and the *Reichstag* in Berlin. Exhaustive libraries on special topics will often be found in Europe in the possession of scientific associations or individual professors. The collections at the national libraries in Rio de Janeiro and Buenos Aires also deserve special mention.

Among the material above described, the most difficult to obtain consists of the reports of the ministers of foreign affairs and parliamentary documents. In the countries of South and Central America, executive reports and documents were formerly printed in limited editions only and many reports have become exceedingly scarce. The work of the student has thus been rendered difficult.

To overcome the handicaps to organized research now existing, and to make available much submerged and partially inaccessible material, I suggest two major collaborative undertakings, one bibliographic, the other scientifically compilatory, which might be subsidized by the Carnegie Endowment for International Peace. The first would consist of a classified bibliography, with notes, of collections of treaties, reports of international conferences, reports of ministers of foreign affairs, reports of international arbitrations, including boundary disputes, and of the pleadings, cases, countercases, arguments and related documents. Perhaps other repositories of documentary material of international interest should also be made available by bibliographic reference. Mr. Denys Myers' useful bibliography will indicate something of what might be achieved in the international field by collaborative effort among the various countries.

The second major enterprise, far more difficult and perhaps unattainable, is a national Digest for each of the civilized countries reprinting or paraphrasing, with appropriate references to the sources, and arranged according to some approximately uniform subject classification, the principal documents from the national archives relating to international law, in all the varying senses of that term. They might draw upon treaties, state papers of all types, laws and decrees, decisions of international and municipal courts and the writings of authoritative scholars. Moore's *Digest* comes to mind as the model for such work. The ideal may not be achieved, but a group of each country's leading scholars, acting in cooperation with the Foreign Office, might produce repositories of information which might serve

not only their own country, but the entire world. Before the work of codification can seriously begin, this information as to the views and policies of each country must, to a considerable extent, be available. Perhaps complete codification is neither attainable nor desirable and a better organization for continuous consideration, deliberation and criticism than we now have, together with a cooperative instead of a combative spirit in international relations, will become necessary. But existing materials, organized and accessible in some fashion, must in any case be made available to the investigator.

In the field of comparative municipal law, the Guides to Foreign Law published by the Library of Congress from 1912 to 1917 were designed to furnish a critical key to the literature and legal system of foreign countries. It will be of interest to know that by cooperation between Yale University and the Library of Congress, it is anticipated that the publication of these Guides will be resumed, France and Italy being the countries next to be explored. For each of the principal countries of the world there are usually available catalogs of noted libraries or bibliographies of varying degree of completeness to aid the investigator.

Finally, further progress is necessary for the organized exchange of information among the various countries. The growth of legislative reference libraries and departments in this country has been a boon to scholars and legislators in all fields. The International Intermediary Institute at The Hague purports to constitute an exchange for information in the international field. Several countries of Europe have organized Institutes or Bureaus for the supply of information in the international field to its constituent nationals. Such effort in the United States is still unorganized. It is highly desirable and necessary. While some bodies, like the World Peace Foundation in Boston, and similar associations, are doing excellent work, it is believed that these several organizations within the country should collaborate so as to divide the field and by better cooperation produce greater efficiency. Perhaps each one alone, or a central executive office established by the several associations, should then be made available for information or, if possessing a library, like the Carnegie Endowment, for research.

When this national reference or research bureau for international matters has been organized nationally, contacts should be established with similar research or information services in foreign countries. The exchange of information and materials should be deemed an essential part of scholarly investigation and practical service in our

field. So much already exists that it would not, I believe, require much effort or money to improve if not perfect the organization internationally. Perhaps Geneva or The Hague might constitute a center of exchange. Just as the exchange of documents has been organized internationally among the countries of the world, so I believe the exchange of information and assistance to research in the field of international law and relations can be organized internationally. The sources for scholarly research, scientific and practical, are inexhaustible. In a field like ours, which inherently transcends national boundaries, they should be made more readily available to the student and investigator. (*Applause.*)

The CHAIRMAN. We will now open this topic for general discussion, say for the next fifteen minutes. The Chair will be glad to recognize anybody who would like to comment on this paper.

Professor GEORGE E. G. CATLIN. I do not want to waste the time of this Conference. I ascertained beforehand that the point which I wish to raise has not been settled elsewhere. In looking through the book which has been provided, page 12 refers to fellowships at the Academy of International Law at The Hague. I gather that this Academy provides lectures for international law students. Of course, that does not mean that it is not also a research center. I do not know how far research work at The Hague has gone, but anyhow the primary purpose of the Academy, I gather, is to provide lectures and the intention is to have all students residing in one place. Moreover, we have heard of a suggested expenditure of funds on centers for research. There is, however, a third question. This is the expenditure of funds on research workers (who would not necessarily find it advantageous to remain in one place).

I have read today the recommendations of the committee of selection of the Social Science Research Council, and I am struck by the generosity of the emoluments recommended. I am also struck by the breadth of subjects covered. There appears to be no valid reason why international law topics should not be included.

Now, it seems to me that in getting a suitable subject for research, we are dealing with a matter that cannot be left to the individual. A list of suitable subjects for research drawn up by people who intimately know the subject would be of the utmost value. At the least, it would be a guide to graduate advisers. At the most, it might lead to these pieces of research being heavily subsidized by the Social Science Research Council or by the Carnegie Endowment for Inter-

national Peace. It would, moreover, serve as one more step in the coordination of organizations charged with the spending of monies with organizations which need funds to carry out their work.

I venture to urge that possibly some subcommittee of this Conference might consider the question of the appointment of a committee to suggest suitable subjects for research in international law and connected fields. If this suggested work were of the kind which might lead up to international regulation, generous pecuniary aid would probably be forthcoming, where the specific research was such as to promise results of a positive nature.

Mr. PHILIP JESSUP, Columbia University. May I just say a word in regard to the Academy of International Law, since I had the great pleasure of being present at the initial session of that Academy.

In connection with the suggestion of the last speaker, I might say that that association was formed at the initial session of the Academy and is continuing and adding to its membership each year from those attending the academy as students and from the professors who deliver lectures there. One of the initial purposes of that association was the exchange of information between the members in the various countries, so it would seem to me quite possible that after the Academy has developed more fully and after the association has obtained a little more solidity and found itself, so to speak, it might be very possible that such an organization as that will fill the need which has been described in transmitting information from persons in one country to persons in another country.

Professor CATLIN. If I might say a word there, Mr. Chairman, it is not so much a question of transmitting information from persons in one country to persons in another country, as rather the specific subjects for research and the talks on law there. It is a question of getting suitable subjects which would have a heavy backing behind them.

Professor HUDSON. No mention was made of the effort of the American Library in Paris to serve universities and libraries in this country in procuring documents of a legal and diplomatic character which are not readily available. Colonel Robert E. Olds, who is known to us all as an eminent lawyer of St. Paul, and who has been an American member of the British-American Claims Tribunal, has interested himself in the organization of this service. They have a very competent man there, Mr. Batsell, and they are hoping to continue their service and make it readily available to people here. I

find it very useful occasionally to write to them and ask for the copy of a particular document. Just last week I received a copy of a treaty from them which had not yet been published anywhere and was not yet available. Perhaps others would like to know of this service of the American Library in Paris.

The CHAIRMAN. Are there any others who wish to speak on this particular topic? If not, we will proceed to the third topic. The discussion of this topic will be opened by Mr. Charles G. Fenwick of Bryn Mawr College, who has practiced what he preaches in his admirable volume just published on international law

THE REEXAMINATION AND RESTATEMENT OF THE FUNDAMENTAL THEORIES OF INTERNATIONAL LAW AS A MEANS TO MORE EFFECTIVE EXPOSITION AS WELL AS TO IMPROVEMENTS IN SYSTEM AND CONTENT

Professor FENWICK. The timeliness of the topic assigned to me is admirably borne out by the morning's discussions, which have practically pre-empted the field. I shall take the liberty, therefore, of departing somewhat from the remarks that I had prepared and emphasize only those of them which seem to me not to have been already sufficiently discussed.

If I may be pardoned a reference to some personal troubles, I can perhaps best illustrate the unsatisfactory state in which the theory of international law now is by referring to the fact that out of five reviewers into whose hands my modest text-book happened to fall the first, reviewing for the International Law Journal, rejected the entire volume on the ground that one-fourth of it dealt with the laws of war. Since in his opinion the laws of war were not laws, and since any discussion of them indicated more or less approval of them, their presence in the volume contaminated everything else and rendered further comment unnecessary.

The second reviewer pointed out the fact that as things now stood each man had his own conception of international law. The conception of the author of the volume under review was not his conception, and while the book might be reviewed from the point of view of the author, it must be kept clear that a treatise on international law, properly understood, remained to be written. Naturally I shall be interested to see the reviewer's volume when it appears.

The third critic informed me that much of the volume was "old stuff." Well, I admit that I tried to bridge over the gap between the

old and the new and write something that would be recognized as international law, that is, be reasonably enough in touch with what was past, and at the same time be sufficiently progressive in its outlook to represent the new order of things. I am frank to say that I am awaiting with interest this reviewer's volume setting forth his conception of international law.

The fourth critic said that an altogether disproportionate amount of attention was given to the League of Nations; that, after all, the League did not really exist except for a few insignificant European Powers, and that it should scarcely have received a mention in the volume. I had thought I had kept the League pretty well in the corner and not made it too prominent, because I knew I was dealing with an institution whose relations to international law were in the eyes of many Americans to be regarded with suspicion.

The fifth reviewer thought that the League had not been noticed at all, and that as the League of Nations contained the great promise of the future, and marked a fundamental departure from the old attitude towards international law, the volume was not of much consequence.

All of this illustrates the situation in which international law is today. We do not know quite where we stand. We are living under old theories under which the nations have grown up during the last three hundred years. These theories, I suppose, were resorted to largely because the publicists who wanted to develop international law had not very definite facts to go upon. I think any one who realizes, as we all do, the state of international relations at the time Grotius wrote, will not regret Grotius' attempt to tie up international law with Roman law. If Grotius had kept to a "positive" conception of international law, he would not have written one volume, much less three. There was not much positive international law in his time, and he had to make good the deficit by calling on the Roman law and the natural law that lay behind the Roman law.

The same, of course, can be said for Vattel. Unless he had introduced some little international morality into his treatise he would not have been able to write on international law at all. At the present day any one who reads Vattel is simply disgusted with the combination of weak concession to diplomacy and pretense of high moral principle; but considering Vattel's day and the circumstances of the time, his work performed a valuable service.

Then we came to the British conception, the Austinian conception

of a positive law, and we put stress upon the facts without reference to their morality. I think if the positive school of international law can be blamed for anything it can be blamed for its utter lack of a critical attitude toward international law. It gave us facts, but no criticism of the facts. Fine as is the treatise of Mr. Hall from the point of view of logic and keen legal analysis, and his treatise is doubtless the best in that respect, Mr. Hall is no critic of the existing conceptions of international law, no critic of the adequacy of international law of 1880 or 1889 to meet the conditions of international relations at that time. In other words, it is a treatise entirely lacking in anything constructive; and, after all, if we are dealing with a science or subject like international law which is in the making, in its early stage of development, and if we have our eyes on the aim and object of international law, which is to promote friendly relations between nations, it is quite impossible for the professor or the publicist to forget the constructive aspect of his subject, the obligation upon him not only to point out lines of actual development, but to map out possible lines of future development.

So our theories of international law are a most unsatisfactory combination of ideas borrowed from the natural law, which certainly had a place in their day, and, on the other hand, ideas representing the hard facts of international practice divorced from any critical attitude toward the justice or injustice of the facts.

Now, how shall we meet this situation? It seems to me highly desirable that we who are interested in the science of the subject should undertake a very careful study of the underlying principles of international law. We raised this morning the question of what is law. Some of us like to try to point out as we go along the analogies between national law and international law, as some sort of a guide to our criticism of international law. Mr. Borchard very rightly pointed out that there is the greatest confusion in this country among the schools of jurisprudence as to what is law from the national point of view. If you put a distinguished jurist of Chicago side by side with a distinguished jurist at Harvard you get two quite different conceptions of what law is even within our own national circle.

If that be the case, of course, the problem of trying to analyze what is law between nations is certainly equally difficult, perhaps more so. But, nevertheless, the task must be undertaken, and it involves a whole series of questions, centering about the main question whether legislative, executive and judicial processes are essential to law, and,

if so, how far the present forms of international organization are adequate to meet the needs of the international community.

If the idea of "law" as between States is open to various interpretations, one could cite a dozen other terms that are equally unsettled in usage. The most conspicuous of them is, of course, our pet term "sovereignty." Sovereignty is a sort of chip which a nation puts on its shoulder, as we put chips on our shoulders when we were small boys, that is, when we were bigger than the other fellow and wanted to have a fight. Let somebody knock the chip off and then we would have a little test to see who was sovereign

Sovereignty is used by the nations today in an utterly misleading sense. Mr. Garner adequately covered the subject in his address last December on the "Limitations upon National Sovereignty in International Relations." The best illustration one might give is, perhaps, the use of the term in our own Articles of Confederation The members of the Confederation emphasized in the second article their retention of their sovereignty and independence, and then in each succeeding article they gave away their sovereignty, until at the end of the articles of confederation there was nothing approximating sovereignty in any real sense left.

So between nations it seems to me that the term "sovereignty" is long since outworn. Let us substitute for sovereignty the term local self-government, national self-government. I take it that is what sovereignty really means today. No one wants to surrender the sovereignty of the United States, if we mean by sovereignty national self-government. There is a sphere of national self-government which no sane man, however much he may believe in the necessity of international organization, however earnest an advocate of the League of Nations, has any intention of abandoning. That, I say, is the true meaning of sovereignty. And that is the only practical meaning of the word "independence" as we use it between nations.

The same might be said of the use of the term "rights" as between States. I have been criticised for using the term as describing present international law. "Can't you eliminate that old stuff," one critic wrote. I do not see how we can eliminate the use of the word "rights" from the text-books on international law so long as the State Department talks of international rights. The term is part of international law. But we as scholars can analyze the term "rights", and see whether rights between States are rights in the same sense that we speak of rights between citizens.

Dean Pound and others of what might be called the School of Sociological Jurisprudence have written a question mark all over the whole idea of rights as between citizens and have given us a new conception of what a right means. Can we not employ something of that sociological critique in respect to international law? I second very warmly the suggestion that Mr. Hudson made this morning of examining international relations from the sociological point of view.

So one might go on down the list. Take the subject of treaties between nations. Can we not analyze a treaty in terms of national contracts? Can we not apply to the idea of good faith between nations in respect to treaties, the so-called sacred faith of treaties, the principles that govern us in our national law of contracts. Who, for example, would suggest that a contract entered into under duress was binding? And yet between nations a contract entered into under duress is binding, as every treaty of peace bears witness.

We have recently witnessed a most interesting decision in the controversy between Peru and Chile, and I must express my regret at the result in spite of the fact that I may be speaking before one or more of those who argued the case on the side of Chile. To me to give validity to a treaty of peace such as the one involved in that case, and to give validity to it after all these years, was an utterly mistaken attitude towards the situation. I could wish that the arbitrator had swept aside the technicalities underlying the case and risen to the occasion and said, "For God's sake do not revive an ancient treaty of peace that was at the time nothing more than a contract entered into under duress. Meet the issue on the basis of justice and fair dealing, and then there will be some hope for peace between you." But, of course, the decision had to be rendered on the basis of the terms of submission. If the territory goes to Chile as a result of the plebiscite, Peru will remain for another generation the dissatisfied loser, feeling that she has suffered an injustice. That is only one further instance of the fact that our principles of international law need study in the light of the jurisprudence that governs our rules of law within national boundaries.

The last phase is the law of procedure between States. I think we can be very hopeful that the law of war is on the way to final extinction. Perhaps we may have to reenact a few more rules. We may have to go through a restatement of the law of blockade and continuous voyage; but while we may have to talk of these matters for another decade, I have a strong feeling that the laws of war are on the wane,

and that the law of procedure in the future will be procedure by peaceful methods, by private arbitration or public hearing before a world court.

I suggest in closing, as a practical way of meeting the situation, that those of you who are interested in the theory of international law try your hand at some classification of the subject. You will find it an almost baffling task. I tried a dozen classifications and every one of them had some weaknesses, including the one I finally adopted, which was then generally criticised as unsatisfactory. Try your hand at classification, and see if by comparison of results we cannot get some classification of international law that will bring us closer to a true science of the subject.

The CHAIRMAN. Is there any discussion now on this topic?

Professor STANWOOD. I merely want to ask one question that always puzzled me. Was there ever a treaty of peace entered into where the contracting party did not have the alternative of continuing fighting and chose freely the lesser of two evils?

Professor FENWICK. It is sometimes said by authors that a treaty of peace represents a voluntary contract, because you have your choice of keeping on fighting or signing a treaty.

If anybody thinks that that constitutes a voluntary contract in any fair sense, I yield the point. If I had a man on his back and he had the choice of being choked or signing a deed, no court would consider his signature as a voluntary act. How the old authors keep repeating that idea is beyond me, except that international law has been under the necessity of adjusting its theories to the hard facts, so that even writers like Oppenheim have been led to defend the indefensible.

Professor BORCHARD. I was interested in the question of the gentleman from Bowdoin. I think he is right. We have to have peace sometimes, even though it is only temporary, and I think for that reason the authors are sound whenever they say that a treaty of peace is legally binding, but essentially that moral and ethical element which underlies the rule of municipal law that duress makes a contract voidable is equally present in international treaties. A treaty, if it is accepted at the point of a gun, leaves with it the same feeling that it is not morally conclusive and that when the time comes the judgment will be reversed. That has been the history of nearly all treaties forced on defeated enemies possessing vitality. Look at the history of the treaty of 1871; probably the history of the treaties of 1919 will be much the same. That moral element is equally present in interna-

tional law and municipal law, only in international law in the absence of the rule that duress makes a contract voidable, we feel it is better to have occasional peace, even if forced. Essentially it is not voluntary any more than "Money or your life" implies a voluntary concession or grant. Only in an ambiguous sense is it voluntary. You have merely chosen the lesser of two evils.

Professor HERBERT F. WRIGHT. It seems to me that Mr. Fenwick has been a little too critical of the arbiter between Peru and Chile. The terms of settlement of that arbitration, the protocol, provided for the taking of the fact of the treaty of 1883 for granted, and it was to settle the involved provisions of that treaty that the arbiter was called in. Consequently, I do not see how he could have gone back of the treaty of 1883.

Another point in connection with the availability of treaty material that Mr. Wright, Mr Myers and Mr. Hudson have mentioned, and that is a recently published book by the Carnegie Peace Endowment on arbitration treaties among the Latin American nations, and in connection with that a new publication is now in press containing the diplomatic correspondence of the United States concerning the independence of those nations from the mother countries.

Professor STOWELL. It seems to me that Mr. Fenwick is basing the law a little too much on sentiment. The purpose of law is to keep the peace. As long as it keeps the peace, that is about all we can ask of it at the present time.

In our national law, take the law of libel. Formerly, in our law of libel, the greater the truth the greater the libel and if anybody published the truth about his neighbor, he was punished the more. If he said something that was not true, everybody knew it was not true and it was not as likely to cause a disturbance of the public peace.

I think the trouble with international law at the present time is that we have certain convictions or doctrines which were good in the past but which it is now time to discard—sovereignty, the equality of States, misconceptions about intervention—a series of doctrines of that kind. When we study diplomatic correspondence—take for example a recent book by Mr. Tyler Dennett on the Russo-Japanese War—we see from the private correspondence of Roosevelt how the negotiations were actually carried on. He shows how President Roosevelt intervened at the very outset of the war, not by force, but by intimating to France and Germany that if they should step in he would intervene on the side of Japan.

That I consider gives us a view of the actual practice of international law in regard to intervention. If we could get more of this diplomatic correspondence and publish it and summarize it and study it for a while before we try to codify too much, we should get rid of some of these obsolete doctrines or dogmatizings about international law.

Professor REEVES. I want to say just a word with reference to what might be called a very fundamental proposition of international law. In looking over various text writers from the time of Grotius down in an attempt to get at what we might call their fundamental political as well as legal philosophy, we find them divided really into three groups, one resting international law wholly upon consent, others having a notion of a self-existent community of nations, out of which arise, let us say, rights and duties, or at least things which they conceive to be rights and duties, and then a number of writers who, while admitting the existence, we may say, *de facto*, of an international community, refuse logically to base international law upon it and, while calling attention to what we might call the *de facto* existence of an international community, turn back and rest international law upon consent.

Now, as I find, most of the writers rest wholly upon consent or wholly upon the idea of a *de facto* international community out of which the *de jure* international community proceeds; or, taking consent as the foundation, they cast side glances at the international community or, to some extent, they start with the international community and swing back again into consent.

I think that a considerable amount of confusion, at least among modern writers and among older writers, of course, is in positing a static situation on the world and developing the whole conception of international law from what are conceived to be international rights and duties based upon a static condition. In other words, I think to a very great extent that in international law we are doing what economists did seventy-five years ago with the economic man, a hypothetical non-existent individual. You will remember—this used to be the case in my day in studying theoretical political economy—one would say, "Let us take a given time and place and proceed from there." The difficulty is that there never is a given time and place, and while you are positing the time and place events are moving forward and we are in a different situation from what we were when we started.

There is no doubt in my mind that we shall never get a proper

foundation for the theory of international law until we depart from categories of static condition and proceed into life with the actualities. The difficulty that at once confronts us with that system, however, is this, that the practice of States is very largely the resultant of political theories that are based also upon static conceptions of State.

Now, those static conceptions of the State, which we may express in terms of sovereignty or independence, themselves come into international practice and modify the whole body of law, so that it might be an excellent thing for us to say, "Let us now simply bow out of the door, the conceptions of sovereignty, and let us say that independence is relative and not an absolute thing," which I think we might do if we were in a field of something like municipal law.

We cannot so easily do it in the field of international law for the very reason that State policies, and therefore State action, have been very largely developed by the political theory of, let us say, the eighteenth century when the categories of the State went up to make a static condition.

That is one of the difficulties we face in attempting to ravel out a situation in order to get a firm foundation for international law. We are conscious of the international community. We are conscious of the life of the international community, but we are also conscious of the fact that States act with reference to each other from impulses that grow out of the categories that are derived from a static order; and I think that that is a difficulty to be seen in the writers not only in our own country but at the present time in Europe.

Professor FITE. Apropos of the general "mud slinging" toward the use of the word sovereignty, and the attitude of internationalists, my attitude toward my State is that I must recognize its sovereignty over me. It is only in the realm of international affairs that the question of sovereignty has been attacked. After 1789 I had to pay my excise tax if I manufactured whiskey out of corn. There was no question about it; it had to be. And, more than that, if the State at that time made good its existence, it had to impress upon its citizens the fact that the State had power and that it must be recognized. The word "sovereignty," in other words, at that time had a very great function to perform, and we ought to remember it when we sling mud at it from the international point of view.

Professor FRANK E. HINCKLEY. As Mr. Reeves suggests, the actuality and power of international law as a part of municipal law or, in a sense, as embracing municipal law or filling in the interstices

between the systems of jurisprudence of the various nations, comes very positively to the minds of numbers of us instructors in international law who have borne or who now bear responsibility for its administration as in State Department service or as counselors or in the courts. We are privileged to study the science of international law as the student of electricity studies his science, but also to know its applied force with its distributed benefits coming to multitudes of individuals and as well enlightening and energizing the greatest of governments. The jurisprudence lectures of Professor Vinogradoff of a recent year at three or four of our law schools, including California, were of fundamental importance, and even the students of later classes appreciated them. With an occasional address at Berkeley by Mr. Root or one or another diplomatic officer or our Judge Morrow or Mr. McEnerney, the diplomatic and judicial interpretation and application of international law has great authority and living reality to us. We are especially grateful to those of you located in the eastern part of the United States—Professors Wilson, Hudson, Garner recently, and Dr. Scott and Mr. Dennis not far back, and many others—whose visits and conferences unite us, east and west, in the progress of America in international law. We are grateful on behalf of our political science students for Professor Fenwick's excellent International Law, our newly adopted text-book. It has, however, full proportion of theory and generalization, and students' questions on actual practice are frequent. Young people demand concrete cases and respond to positive developments and successes of the law. The outdoor life of the west and the opening of the Pacific Ocean era enlarge the desires of our youth for the positive and confident atmosphere of study. In this feature there is special value in study of cases in a second or later year of international law study. Yet with study of cases, judicial and diplomatic, and with some training even of a detailed vocational nature, we continue reading from the works of scholars in international jurisprudence.

Professor FRANCIS N. THORPE. Mr. Chairman, I do not want to step on anybody's toes, but I think our text-books are not the acme of fashion. When Dr. Scott got out his *Cases on International Law* that meant one thing; when the distinguished gentleman from Bryn Mawr got out his book on the theory of international law that is another thing. We have two aspects of national law to deal with, the *de jure* aspect and the *de facto* aspect. What are you going to do with it? The man who writes a book is

unquestionably a learned man, but he has to contend with such problems as exist between the United States and Russia.

I have been very much mystified in my uneventful life by the text-books. As Dr. Reeves has truly said, there are many of them and they all show a different attitude towards the subject. Many things that are worth considering as material that a student can use are to be found in that rather despised sheet called the *Congressional Record.* There is a good deal in the *Congressional Record* that does not happen elsewhere, but there are some things that do happen elsewhere, and if a patient reader will look through the *Congressional Record* he will find the text of many treaties and protocols and problematical subjects which deserve attention.

One of the gentlemen this morning spoke of keeping up the interest. Whether it is our business in life to keep up the interest of students or not I do not know. I have my doubts about it. But if they are not interested I do not know why we should be. The students are interested in present-day questions; those questions which are now classical with the learned Professor at Harvard. Can we use this material from Washington?

When we turn to the text-book we find it extremely a matter of fact or extremely a matter of abstraction. I leave it to you, gentlemen, if that is not true. The text-books you use, if you ever use them in your classes, either run to abstractions or they are mere encyclopedias. Do not forget that you are international lawyers. It is not the student; it is not the text-book; it is the man. The *de jure* matter is ethical; the *de facto* is common matter by which we must guide ourselves if we are going to live in the ordinary world. So international law is a high branch of ethics after all, and all these cases, whether they are a hundred years old or have just come down from the Supreme Court, are very largely matters of international ethics. As for this question of whether we are to lay down an ethical standard for the Persian or the Turk or the Arabian, I think we are to do it. The Anglo-Saxon world has to lay down doctrines of international law.

Professor FENWICK. Mr. Chairman, could we not make it Nordics instead of Anglo-Saxons?

The CHAIRMAN. If anybody can define what a Nordic is.

Professor DICKINSON. I had not intended to take any part in this discussion, but I think I ought to make a confession. I am reviewer No. 6. One of the things I most enjoy in these annual excursions to Washington is the delightful and always refreshing and stimulating

contact I have with the author of Fenwick's *International Law*. So I did not send in review No. 6 to the printer until a few days before I started to Washington; else I should have undoubtedly come in for excoriation along with the rest of them. I hope the review when it appears will impress the reader with the very favorable impression which the book made upon the reviewer. I think Mr Fenwick has given us an admirable introduction to the subject.

The one feature of Mr. Fenwick's book that personally I regret most is its classification, and I confess I was astonished to find it there. I have talked about that problem with Mr. Fenwick so many times, and he is such a vigorous, helpful and altogether sane insurgent in matters of classification that I was considerably surprised and disappointed to find that he had finally given up the attempt at a different classification and had fallen back, in a substantial measure, upon the right of existence, the right of equality, the right of independence, etc. It has been suggested in the discussion here that one justification for that is the circumstance that international negotiations and international incidents are cast in terms of those old theories and so we must retain them in the books and must arrange our classifications accordingly. I am very sceptical about that. I am very much inclined to doubt whether it is true. Because the United States in a certain controversy asserts its position in terms of sovereignty or in terms of equality or in terms of self-preservation, I do not believe it follows necessarily that that is the essence of the position which the United States is taking or that it is the essence of that precedent's real significance. I believe we may to advantage be considerably more critical than we have been in the past in attacking the documentary records of certain negotiations and certain incidents and in getting at their real significance. Those of us who have to deal with the reported decisions of national courts have long since found that we have constantly to look behind the trite phrases and the maxims and the jargon which the judges may use in order that we may ascertain what they really mean, in order that we may know the principles and the processes of reasoning which really determined their decisions.

I would just like to suggest that if we will approach these assertions of international rights in terms of sovereignty and equality and self-preservation, etc., in somewhat the same critical spirit, and perhaps a little more critically than we have been inclined to heretofore, we may find after all that the old classification, based largely upon a theory of fundamental rights or natural rights, is not positive international law.

It is largely a creation of and a "hand-me-down" from the theoretical writers. So I doubt whether it would be a very violent break with the past if we should throw overboard a good deal of that classification.

The CHAIRMAN. I would like to suggest that perhaps we should now throw open the discussion of these previous topics so that any one may feel free to speak now on any matter that has been treated here this afternoon.

Mr. MYERS. Mr. Chairman, relative to the books, I have in mind two that it has always seemed to me were very much neglected. I admit they are not suitable text-books, but it seems to me they approach the handling of international law from the proper modern point of view and carry out the idea fairly consistently. I refer to Fedor Martens' *International Law* which was originally published in Russian and translated by Léo. I think there is only one edition of it. Martens, you will recall, served at both of the Hague conferences, on almost innumerable arbitrations, and in the latter part of his life was given the unofficial title of the Chief Justice of Christendom, because of his constant service in arbitrations.

He starts his book from the point of view that he is dealing with the law of an international community and carries that through consistently. The book as a consequence is quite different from the ordinary text-book of international law, and while it is not suitable for the use of the student, it has always been a great disappointment to me that the teacher has not used it more and modified the formal handling and the dealing with theory in the text-books from such a source.

The other book—and I know you, Mr. Chairman, will have some sympathy with this—is James Lorimer's *Institutes of the Law of Nations*, a book that was published about the same time that Martens' appeared in French. Lorimer was one of the founders of the Institute of International Law and was a rather curious hard-thinking and rather a difficult-writing Scotchman, but he always handled the matter from the point of view of an international community.

I think their conclusions for the most part are sound, and if the teacher gave some attention to them he would find that some of the things that we have been discussing here already have precedents in print, so that he might be encouraged to deviate somewhat from the stereotyped methods that have been followed.

Professor HUDSON. Mr. Chairman, the question of classification has been raised several times this afternoon, and I wish that we might

discuss the propriety of the usual division which is made, between the laws of peace and the laws of war.

We are now a short distance after the World War, and it seems to me that we ought to have some common view, if it were possible, as to what emphasis is placed on war in our instruction. I may have been one of those who criticised Mr. Fenwick's book as dealing too extensively with the so-called laws of war, for I very much doubt either the practicability or the utility of our spending very much time in discussing the laws of war.

Reference was made this morning to a number of cases. Most of the cases referred to were cases decided by prize courts during the past few years. There is a question in my mind as to how far we as teachers of international law ought to spend time on that material. For myself I should much prefer to deal in a course on international law with what we have previously known as the laws of peace. I think their treatment ought to be very much expanded over the treatment in the casebooks that we have. I do not find myself much interested in the casebooks' material dealing with the laws of war. If a man goes from law school into practice, what is the chance of his having to deal with such cases? It is a very remote chance indeed. And if he is not going into practice, if he is making a study of international law, is it essential that he know what the distillation of those cases is today? I doubt very much whether as it is distilled today the law will ever be applied in any future war. I suspect that most of it is very obsolete. But I should greatly like us to discuss the relative emphasis to be placed on the laws of peace and the laws of war. In teaching students who are interested mainly in what they are going to encounter in practice, I do not spend much time on the laws of war. Perhaps I may spend a week or two on that part of Scott's casebook, but the rest of it seems to me much more important, and I hope we all share the view that it ought to receive the greater emphasis.

The CHAIRMAN. I rather suspect that the frequent allusions to a certain recent book on international law may be the result of a conspiracy which Mr. Scott and Mr. Fenwick have started.

Professor BORCHARD. Some things were said this afternoon that have made me think of John Bassett Moore's recent work. I believe all of us ought to read that very carefully. The idea, to which partial utterance has been given this afternoon, namely, that the late war has destroyed what had gone before, is a source of great danger. Mr. Thomas Baty recently printed an article in the *Yale Law Journal*

entitled, I believe, "Danger Signals in International Law." The conception that neutrality does not matter any more, or that the law of contraband is obsolete, is likely to lead to incalculable dangers, for, with the growth of the physical instruments of destruction, has come also the impairment of elementary legal conceptions, and the combination is liable to be ruinous. Nobody can say whether or not we are going into a decline of our existing civilization. There are enough indications for the pessimist, with some possibility of truth, to say that we are.

Now, I do not think the teachers of international law should aid the movement of destruction. Life is just what it is, and we have to deal with the miserable world we live in as we find it, with the hope of improving it. I do not believe that by shutting our eyes to the phenomena of difficulty, and refusing to deal with them, we are putting them out of existence. On the contrary, in disregarding those safeguards for the protection of mankind which two hundred years of practice have developed, we are giving unlimited sway to the destructiveness of war.

I must say that from the data that comes before me I can find no assurance that war is to be eliminated from the world. If I were to be honest, I would say that I see many indications that, on the contrary, wars for this coming generation or two are very likely to occur. For that reason, I do not think it a useful service to disregard the laws of war. They may be violated again as they have been in the past; but, nevertheless, it is surprising to note to what extent they have been observed.

Whether we are teaching general students or teaching persons who expect to become practitioners at the bar, I think it a mistake to minimize the importance of the laws of war. That does not mean that we must not criticise; that, for example, we must not show that these prize courts are acting under municipal law and that most of the time the statutes that gave the prize court jurisdiction grossly violated international law. But that does not excuse us from the duty of reckoning with this practical phenomenon called war.

I do not concede that the conduct of international relations is completely in the field of the jungle. I admit that much of it is, but then it is mostly politics, and not law at all. That part of the field that has been moderately crystallized into law is very vast, and on the peace side and on the war side it must be studied. We can, of course, express our ideas of the illusions, the folly, the inhumanity of war, but I do not think it ought to be disregarded by the student of international law.

The CHAIRMAN. I will depart a bit from the program and call upon a veteran who was prepared to speak earlier in the afternoon, Professor Hershey.

Professor HERSHEY. I was not exactly prepared to speak along these lines. I had merely a suggestion, which was that, for the undergraduate student, it would be a very useful thing to have a source book on international law, a sort of abridged Moore's *Digest* which, of course, would be more international in its character than that monumental work. It should contain a collection of the most important and interesting data relating to sources, illustrative diplomatic cases, and some of the most important court cases, though I do not suppose we could have many treaties. We do not want a volume that is too bulky, but there should be plenty of bibliographical data. In fact, I think that our text-books as a rule do not give enough data of the bibliographical sort, especially relating to sources.

That was, I think, the suggestion I had in mind at the time. I am very much interested in this controversy about the laws of war in future text-books, because I happen to be revising my text I never cross any bridges until I get to them, but I should very much like to hear more discussion of this subject.

Professor HUDSON. My advice is, leave it out of your future text.

Professor HERSHEY. I am very glad that we have had both sides of this question presented and I have not, to tell the truth, made up my mind about it. I feel sort of lost in the woods, but I am very much interested in this controversy. I do not feel that I can make any valuable contribution to it at the present time.

Professor D. SHAW DUNCAN. In listening to this discussion, I am wondering whether there is not some confusion at this point, for to my mind there must be a difference in the presenting of material to law students, but I think the great problem for most of us is the presenting of the matter to college students rather than to law students. I notice that the discussion of Mr. Hudson and also of Mr. Borchard refers to the presentation of the material to law students. I cannot see how, in presenting international law to students of the arts who come to us from a study of history and political science, you are going to discuss international law and leave out the question of war, and how you are going to present it in that way to them unless they know something about what the rules were in dealing with matters of this kind. Even though you may assume that sort of an attitude in the new text-books, I cannot see how the discussion of war is actually going to be left out

and yet give an arts student an idea of what international law really was and now is.

Professor QUINCY WRIGHT. I have great sympathy with Mr. Hudson's point of view on the law of war. On the other hand, it seems to me that we should not forget that international law has value both as informing the student of the rules and principles which exist and also as instructing him in the methods by which international law is discovered in all sorts of circumstances.

Now, war is one of the most peculiar circumstances which arise, and I think it is important for the student to know that it is possible for a jurist to find sources by which a decision according to law can be given even in such a marginal case as war.

On the whole, is not international law simply an effort to settle international controversies objectively and justly at the same time? It was refreshing to all of us to have a forthright presentation of Mr. Thorpe's point of view, denying the existence of international law and asserting that the only position is *my* position, namely, that there is no objective body of law. Those of us who believe that there is international law think it is possible to find objective standards for settling every international controversy. I think controversies can be decided according to law, even in case of war, and it is important for the student to have an understanding of that. In connection with the excellent suggestion that Mr. Hershey made in regard to a more limited book of source materials on international law, I am a little afraid that material which a student finds all prepared and classified in a neat volume will never impress him in the same way that material will which he has discovered, which he has found as a diamond in a great mass of material. I recall in my own experience many cases where I have assigned a hypothetical case, and a student has told me, how, after many hours of search, he suddenly came upon original material—some statement of a text writer or a case that bore precisely on the matter. A discovery like that is like finding a diamond, you know. It stands out. The student realizes what the process of finding materials is. I do not think the student ought to be deprived of the opportunity of finding such diamonds in the actual source materials.

The CHAIRMAN. There may be a question as to whether or not international law gives way before municipal law, but certainly the discussion of international law must give way before such rules as exist with reference to the arrangement of this room. I am advised

that certain workmen leave at 5 o'clock and it will be necessary to put in place a platform before they go. That will take about fifteen minutes.

Now, will you take a recess now for fifteen minutes and then renew the discussions, or what is your pleasure?

Professor STOWELL. How would it be if some of the committees should now have a preliminary meeting?

Professor DICKINSON. I think there are some of the committees that desire to hold preliminary meetings before tomorrow. Perhaps we had better adjourn and give them an opportunity to meet.

The CHAIRMAN. Well, then, under the circumstances we will adjourn for the day.

(Whereupon, at 4.40 o'clock p. m., a recess was taken until the following day at 12 o'clock noon.)

LUNCHEON CONFERENCE

Friday, April 24, 1925, at 12 o'clock noon

The Conference met, pursuant to adjournment, at 12 o'clock noon, with Dr. JAMES BROWN SCOTT presiding.

The CHAIRMAN. Ladies and gentlemen, if you will restrain for a minute or two your impatience to hear Mr. Hudson descant upon the question of the contemporary development of international law the coffee will be served and there will be no noise other than that of the chief speaker. At the conclusion of his remarks the floor will be opened to those gentle and affectionate expressions of personal disagreement which we have learned to regard as one of the chief functions of the teacher of international law when he rises to speak.

In order that I may correct any mistake regarding the title of the address to which you are to have the pleasure of listening, let me read it: The Contemporary Development of International Law, by Professor Manley O. Hudson, Harvard Law School.

CONTEMPORARY DEVELOPMENT OF INTERNATIONAL LAW

ADDRESS BY MANLEY O. HUDSON

Bemis Professor of International Law, Harvard Law School

Mr. Chairman and fellow students: The President of our Society made some references to the academic point of view last evening which I thought were somewhat disparaging. I should like it to be understood, therefore, that I am speaking today as an academician who does not accept the distinction sometimes drawn between the academic point of view and the practical point of view. I am happy to note that last night when we listened to a learned address by our colleague, Mr. Reeves, we were celebrating the tercentenary of none of the great men of action of the seventeenth century but of a scholar who did much of his work in a closet.

I find myself in hearty accord with the desire expressed by our organization committee that this Conference "establish connections with the work of the Conference of American Teachers of International

Law held in 1914." But we are living in such a galloping age that the suggestion has a certain anachronistic flavor. The decade which has passed since the meeting of that Conference has seen a testing of international law such as perhaps no factor of human society has ever before had to experience, and only a divine miracle could have saved our law from undergoing as a consequence changes which make it vastly different today, both in content and in direction, from what the previous Conference foresaw.

The Conference eleven years ago addressed itself, in obedience to Mr. Elihu Root's suggestion, to the "putting of instruction in international law in American educational institutions on a broader basis"; and Mr. Root urged this, not as a "mere matter of science" but as a "matter of patriotic duty." But I venture to hope that this Conference will reverse that emphasis. So many crimes have been committed in the name of patriotism in these modern times that I find myself a bit distrustful of that motive I should feel that we were more likely to do our patriotic duty if we would devote ourselves to the "mere matter of science" in our effort to broaden the instruction in international law, and would leave the avowed service of patriotism to the thousand other bodies which make their pilgrimages to this city of uplifting ambitions. For I suspect that our friends the politicians are as apt as ourselves at teaching the masses of laymen what they should think about international law, and our special aptitude, if we have any, is the development of a scientific body of law which we may teach professionally and which they may study in the leisureful off-years between presidential elections.

It is to instruction in international law as a "mere matter of science" that I would ask your attention to be directed today, and the query which I would state, without attempting to postulate any answer, relates to the existing state of international law, the process of its contemporary development, and the rôle which we as its teachers would play in shaping its future course. The Conference of 1914 gave its energy almost wholly to considering the methods and extent of instruction, but little of its time was given to considering *what* should be taught. It did resolve that students should be impressed with the "definiteness and positive character of the rules of international law," as well as their "evolutionary character." But the report of the Conference throws little light on the current thinking either as to the nature of our international law or as to the processes of its growth. If that approach was proper at the time, I cannot think that many of

us will be content with it today. The changes which have come in world society, which indeed are even now under way, have been so challenging that few of us can feel very confident satisfaction in teaching the law which comes down to us as the law which orders the world in which governments have to act and exigencies have to be met. I hope, therefore, that during the present Conference, we may have more time for examining some of the basic problems of our profession and for exchanging some of our convictions or doubts, as the case may be, as to what we are teaching and as to what our international law is and is becoming.

For one, I cannot bring myself to impress upon my students "the definiteness and positive character of the rules of international law." Hardly more can I impress upon them the definiteness and positive character of the law of torts. This does not mean any minimizing of the importance of the law of nations in international society, nor of the law of torts in national society. For I do not conceive of law in terms of definite and positive rules. There are such rules, of course, and in certain branches of the law they serve very useful ends. The rule against perpetuities, the rule as to the liability of the indorser of a negotiable instrument, or the rule as to the burden of proof of contributory negligence, can be taught as definite and positive rules of law. But how little of public law, and particularly of the law of nations, is susceptible of such formulation! Rather it is principles and standards to which we resort, and, unless I misconceive the facts of our juristic history, which have furnished the basis of international practice in the past. For the law of nations, like municipal law, is not at any time a fixed body either of doctrines or of commands. It is always a process, a method of dealing with competitions of interest, and I cannot feel that I am doing my job if I attempt to put it into any other impression.

Of course this involves the whole conception in our minds as to the nature of our task as interpreters of international law, and I suspect that the contemporary development of international law depends upon these conceptions as much as upon anything else. If we follow Hegel and conceive of ourselves as puppets on the stage where a drama of juristic history is unfolding itself, or if we follow Austin and conceive of ourselves as announcing the commands of a real or imaginary sovereign, it is doubtless of little importance what we teachers do, for our law will go on rolling up with the process of the suns despite ourselves. But if we conceive of ourselves as social engineers in the field of international law, to borrow a phrase of Mr. Pound's, if we make it

our task to adapt and direct and even to construct a law of nations with reference to the life of our time, much may depend upon what our efforts are and the way that we as teachers approach our task. Indeed our contribution to the contemporary development of international law will be fashioned chiefly by the patterns in our own minds. The fact that so much of the law is in a state of flux does not of itself involve an extension of our influence. Blackstone wrote the law which was administered, not so much in the courts of his own time as in the courts of a preceding generation. So we may fix upon the future a law which the world has outgrown, even in such a period as we are in today. Taught law is ever tough law, and I suspect it is toughest when the teachers are most indifferent to the currents flowing about them.

Now conceiving of our task as that of social engineers in the field of interstate relations, what is the equipment that we need? And how shall we proceed to make our efforts productive? It is not as pedagogical problems, that I put these questions. I believe most of the pedagogical problems will solve themselves if we are doing a workmanlike job in our field. I do not fear that not enough people in America will know international law; I do fear that we who busy ourselves with the problems will not know enough international law. Kent and Story are great names in American history not because they made law popular, but because they made popular law. And I am convinced that we shall not have missed the unparalleled opportunities of our time if we give our energies to the plans for "placing the instruction on a more scientific basis" though we let the other subjects in our agenda more or less take care of themselves.

What is the scientific basis of our law of nations today? We derive our law from the line of scholars who have based their work on Grotius, and I wish that our generation might celebrate the tercentenary of that great scholar by doing for the law of the twentieth century a service comparable to that which he rendered for the law of the seventeenth century. But it seems to me quite clear that we cannot hope to find in Grotius' inspiration the jural materials for doing the work of our own time.

Yet reading the current literature of international law I am struck with the little philosophy that we have developed since Grotius did his work and since Pufendorf and Vattel gave it fresh touches. We still think and write in terms of eighteenth century natural law. We have dropped some of its terminology, but little of its essence. We no

longer teach the "law of nature and nations," but we carry on many of the issue of that union. Long after Nature has been dethroned in other branches of law, we still go to her as the fountainhead of our conceptions.

I feel free to take an example from a book which I greatly admire and which I have tried to praise—from the most scholarly and most useful treatise *on* international law that has ever been produced in America, that of our colleague Mr. Charles Cheney Hyde. When it first appeared, I searched it eagerly for answers to the many questions in my mind as to the philosophical basis of our twentieth century law. But Mr. Hyde only told me that "the basis of the law imposing common rules of restraint has been the consent of the several independent States which were to be governed thereby," and that this consent had been "yielded by necessary implication." I did not feel myself relieved at all when he later assured me that the consent had been "irrevocably given." Steeped in the writings of Cardozo and Holmes, of Pound and Wigmore, I found in such statements little solace for my sufferings.

It is not simply that our lack of an adequate philosophical foundation for our law prevents us frequently from understanding each other's minds. More deplorable, perhaps, is the degree to which we are handicapped in dealing with ordinary every-day problems. We have no theory or terminology for such fundamental conceptions as that of a *right*, and in spite of all the juristic literature dealing with the subject we go on enumerating the rights of States in terms inherited from the eighteenth century law of nature. To President Woolsey a right was something implanted in the nature of man by his creator. Except for its reference to the Declaration of Independence, the declaration of rights framed by the American Institute of International Law might almost have been cut out of an eighteenth century treatise. We lack also a theory of treaty obligations, and Mr. Hyde did not explain their nature beyond telling us that "the rights of non-performance are given up." In the theory of sovereignty perhaps we have our greatest anachronism, as Mr. Garner has shown so admirably in his presidential address to the American Political Science Association. The American Institute of International Law continues to emphasize "the rights inherent in complete independence, liberty and sovereignty" at a time when the world struggles so laboriously for a law that will synchronize with the interdependence which activities in so many other fields are fast increasing. Yet we endeavor to combine such theories of absolute independence with our helplessness in front of such

a situation as that in which the United States finds itself, with a rum fleet at its doors which it cannot prevent from flooding the country with illicit liquor.

Isn't it obvious that we are in need of a restatement of the basic conceptions of our international law, that we need in fact a philosophy of international law which can take its place at least with the philosophy of our municipal law? We need to have done for the twentieth century the kind of job which Grotius did for the seventeenth century. We need to abandon the notion that we can only lengthen and broaden what has come down to us from Lord Stowell and Chief Justice Marshall, and to begin to dig new foundations and build new superstructures by exactly the same process which they themselves employed. We have been living in an imitative period in international law, and we shall not have grasped the opportunities brought to us by the events of the last decade unless we make this generation another creative period in its history. Until we have done this, I fear we shall be wholly unprepared for any codification of the fundamental bases of international law. The job which I am attempting to outline does not call for any conference of politicians; it does not call for any action of governments; it is not likely to be served by any resolution of a bar association. It is a job for scholars, and if the teachers do not devote themselves to its accomplishment I have little hope of its being undertaken by any other branch of the profession. The age of romantic opportunity in the field of international relations was not closed by the armistice of November 11, 1918.

We shall be fortunate indeed if such scholars or even a few of them are forthcoming in our generation, for the task of renovating our philosophy of international law is not to be finished while we hold the stage. The need is so great, and meeting it calls for such herculean energies, that it may seem to many of us but remotely related to the contemporary development of international law. So I want to speak of another phase of our opportunity, of another direction in which our efforts may be turned while we work with the accumulated materials which the scholars of the past have put into our hands.

For the popular discontent with what we have done and are doing has created for us other opportunities. From the extreme of saying during the war that international law had broken down, from the *abandon* of the assertion that international law did not exist because people looked in vain for a law to restrain their enemies, the pendulum of public opinion in America has now swung to an insistence on the

"codification" of international law. And if one may draw a conclusion from the eagerness of the politicians to climb on this new bandwagon, it seems that the insistence has gone far enough to increase our professional opportunities. Of course most of the people who clamor for "codification" have little conception of what they mean by the term, but that does not really matter. The important thing for us is that the attention of politicians has been directed to the development of international law, and we have the opportunity to point the way.

Disappointment has sometimes been voiced in America because of the failure of the First Assembly of the League of Nations to undertake, as an advisory committee of jurists had recommended in 1920, to carry on the work of the two Conferences at The Hague, by calling a new interstate conference to reestablish the existing rules of law, more especially those affected by the war, and to formulate modifications which the war had shown to be desirable. Even our esteemed President, Mr. Hughes, has voiced this disappointment. But I think certain phases of that problem have not been sufficiently presented in America. In the first place, the resolution passed by the committee of jurists at The Hague seems to have been the subject of little or no debate and it is difficult to believe from its wording that it represented the matured reflection of the eminent men who composed that committee.

In the second place, the resolution seems to have envisaged a conference which would deal with the laws of war, so sorely strained during the course of the hostilities, very much as the Hague Conferences had dealt with them. But a more inopportune time for such an undertaking than 1920 has not existed in modern history. The world still rocked with the passions which the war had engendered. Most people still saw themselves as lined up in a great death struggle. The grip of war psychology had not yet been loosened, and peoples who had been enemies in the war were by no means prepared to sit down together to build a common law.

For a third reason, also, it seems difficult to believe that the committee of jurists took their resolution as seriously as it has been taken in America. The whole conception of neutrality had been challenged in the latter part of the war. No very powerful States had succeeded in holding a neutral position, and the belligerents had shown progressive disrespect for the traditional incidents of neutrality as the fighting continued. In 1920, the ex-belligerents would almost certainly have stood for a formulation of the laws of war in terms of their war-time insistences, and I think it is very questionable whether it would have

been wise for the generation that waded through the war to saddle its views on the future in any such manner.

I feel that it is fortunate therefore that the First Assembly of the League of Nations declined to follow the advisory committee of jurists. But this does not mean that no effort was made to develop international law. I think the records of the five Assemblies show that we have made a great gain in this respect. With the establishment of a habit and tradition of conference—more States are now represented at Geneva each September than were represented at either of the Hague Conferences—it has become possible for the governments to devote continuous effort to filling in the lacunæ in our law. No global restatement is being attempted, but as a need in any field develops, a functional approach is made which promises much more satisfactory results. In five years, sixteen labor conventions, seven conventions on freedom of transit and communications, a treaty on the white slave traffic, a treaty on obscene publications, a treaty on arbitration clauses in commercial contracts, a treaty on customs formalities, and two treaties on opium traffic have resulted from this approach, in addition to the encouragement given for the ratification of other treaties. Next week a conference will meet in Geneva to draft a convention dealing with traffic in arms. Thus a new process is under way—a process of coordinate and continuous and systematic international legislation—which promises to make over the law of nations of the next quarter century.

Significant action was taken by the Fifth Assembly in setting up a committee of jurists to say what subjects of international law are ripe for the application of this new process, and what gaps exist which might be neglected by the fifty-five governments which send their representatives to Geneva each year. That committee held its first meeting in Geneva early this month, attended by jurists whose names are a guaranty of intelligent endeavor: Hammarskjold (Sweden), Diena (Italy), Botella (Spain), Brierly (Great Britain), Fromageot (France), Guerrero (Salvador), Loder (Holland), Barboza de Magalhaes (Portugal), Mastny (Czechoslovakia), Matsuda (Japan), Rundstein (Poland), Schücking (Germany), Suarez (Argentine), de Visscher (Belgium), Wang (China) and Wickersham (United States). The committee has not been charged with the responsibility which the Advisory Committee of Jurists desired to put upon a Conference in 1920. It has not been given the task of drafting a code, or even of elaborating conventions which might form a code. It is to prepare a "provisional

list" of subjects which are properly susceptible of regulation by international legislation, to have this list communicated to governments, to examine their comments in reply, and eventually to report to the Council on the subjects with reference to which international conferences might enact useful legislation. Only in a very loose popular sense is it a commission on "codification." At its first meeting the committee decided to explore the following eleven topics with a view to their possible inclusion in its list: nationality, territorial waters, diplomatic privileges and immunities, immunity of public merchant vessels, extradition, responsibility for injuries to foreigners, procedure of international conferences and the conclusion of treaties, suppression of piracy, prescription, exploitation of the riches of the sea, and the criminal competence of States in regard to offenses committed outside their territories. Fortunately, I think, the committee omitted from this enumeration all topics dealing with the laws of war, and it has also deferred consideration of topics relating to private international law. If, as a result of its work, a larger use may be made of the legislative machinery which now centers at Geneva, I think all of us will be grateful for the turn the events have taken.

Meanwhile, another movement is under way for the development of international law in this hemisphere. The Fifth Conference of American States, meeting at Santiago in 1923, resolved to reconstitute the Commission of Jurists which was originally provided for in the convention of Rio de Janeiro of 1906 and which held its first meeting at Rio de Janeiro in 1912; and the new commission was instructed to proceed with the codification of public and private international law. It seems to me most unfortunate that in connection with the work of this Commission the emphasis is being placed on "American international law." I wonder what we should think if the States of Europe were to launch a codification of "European international law." A century and a half ago that phrase was current, and in 1781 in our first legislation dealing with the law of nations our Congress proposed the adoption of "the law of nations according to the general usages of Europe." But surely the day has passed when international law can be continentalized in any part of the world, and with the currents of international trade and politics crossing all oceans as they do today it would seem a very backward step to attempt to confine them in any way to a single hemisphere.

It is not to be controverted that contiguity of geographical position and identity of political interest make it inevitable that certain groups

of States should proceed to protect their group interests. The Conferences of American States have done useful work in building a public law for the Americas analogous to the public law of Europe. But I fear that only unfortunate consequences would flow from an attempt to localize the law of nations.

My fears have not been assuaged in any degree since I read the thirty projects drawn by the American Institute of International Law to be presented to the Commission of Jurists if and when it again meets at Rio de Janeiro. One of those projects would create a Pan-American Court of Justice, wholly dissociated from the Permanent Court of International Justice, which as a result of a generation of effort is now on the high road to useful activity. The project itself is so drafted that I cannot believe it will be adopted, but it seems to me a most regrettable thing that the peoples of these American Continents should be discouraging in this way the efforts being made to organize world society into a universal community. If our experience with the broader type of organization demonstrates the necessity of more local institutions, it will then be the time to proceed to their formation.

Nor does it seem probable that our recent progress in international legislation is to be furthered by the codification of many matters with which these thirty projects deal. A legislative definition of "nation" for instance would not meet any vital need, nor is a codified statement of the "fundamental bases of international law" likely to have any enabling influence in our dealing with future problems. Perhaps I am too bound by the prepossessions of a training in the common law; but I should prefer to have our legislative energies given to the handling of the more concrete problems which arise in the course of every-day contacts between States.

We need to distinguish in our talk about "codification" between three somewhat different processes which are often confused. It is doubtless possible, first of all, for us to make a global restatement of existing international law of the kind now being made by the American Institute of Law with reference to various branches of private municipal law—the law of agency, of conflict of laws, of contracts and of torts. Dr. Scott has told us that any standard treatise abridged in the form of a statute would be an acceptable code. But if this be true it is difficult to see how "codifying" the existing law would add to anything but its rigidity. With regard to the topics as to which there is no difference of opinion among us, perhaps a restatement would be useful, but unless the unanimity exists, it would have offsetting dis-

advantages, and certainly the mistake of the Declaration of London should not be repeated by restating as existing law what is not admitted to be such.

A second kind of "codification" would be the unification of the national laws of various countries, where such national laws already exist with respect to subjects covered. This would be comparable to the work of the National Conference of Commissioners on Uniform State Laws and of the Canadian Conference of Commissioners on Uniformity of Legislation. Various efforts of this sort are already under way, and I doubt if they can be hurried greatly. Much of the work of the International High Commission has been directed to this end, and our recent conventions on the treatment of commercial travelers are part of its fruits. The International Maritime Conferences at Brussels are wrestling with such problems, also, ably backed by the unofficial *Comité Maritime International*, and its efforts may effect the acceptance of the Hague rules of affreightment. But the most hopeful endeavor of this kind is perhaps that of the International Labor Organization, with its annual conferences, its permanent office, and its established procedure. It has already yielded sixteen conventions which have been widely ratified. But wide as are these activities, unification cannot be applied to the whole of our law, and attempts to unify certain branches of private international law, notably the law of bills of exchange, have met with serious reverses.

It is a third sense in which the term "codification" has come to be used quite generally, connoting wholly new international legislation. Much of the insistence in America, from such leaders as Senator Borah, demands a codification which will give us a new body of international law—which will chiefly attempt to legislate war into the position of piracy. Apart from such far-reaching reforms in which the lawyers may only follow where the politicians lead, such codification would only continue a process which produced the large number of multilateral treaties between 1875 and 1914. With a new habit and tradition of conference now fast becoming an accepted thing, with conferences of fifty-five States meeting annually and smaller conferences meeting quarterly with regularity, the world is equipped for this process today as it has never been in the past; and I think it is along this line that we may expect the greatest progress to be made in the development of international law in the future. The Arms Traffic Conference which is now about to meet in Geneva is an example. I suspect that for the most part, this legislation will not be the work of the lawyers. It

must represent a functional approach by the people who are close to the current problems of affairs which make the legislation necessary, and our part as lawyers should be much the same as our part in the framing of municipal legislation.

With all the efforts that are under way, today, one thing seems to me fairly certain. We may not agree as to what the international law of today really is; some of us think it has already broken out of the bounds of eighteenth century survivals. But we can hardly disagree that a quarter of a century hence, the living law of nations is going to be very different from what it has been thought to be during the last decade. I doubt if any period since the early days of Grotius' influence has been so fraught with impending change and impelling opportunity as the period in which we live. It is a romantic adventure to teach international law in such a time—as romantic as the teachers of physics and of medicine must be finding their jobs.

If I may try to summarize in a sentence what the contemporary development of international law seems to me to involve, I should say that it necessitates, first, a renovation of the philosophical basis of our law along some such lines as those indicated by Dean Pound in his inspiring lecture at Leyden; and secondly, a development of international legislation through the use of our existing machinery, along some such lines as those indicated by Professor Oppenheim in his prophetic paper on "The Future of International Law." The first is preeminently the province of our profession, and the second also will depend to no small degree on the content of our teaching. Our opportunity is limited only by the extent of our vision and by the respect which we have for ourselves as members of a great profession

The CHAIRMAN. Ladies and gentlemen, I am sure that we have all listened to Mr. Hudson's paper with a feeling of admiration not untinged with one of regret that our activities in various lines do not meet with his approbation. However, after an experience extending over many years, I have come to the conclusion that we do not need to accept the views of those for whom we have an affection and that, as a matter of fact, free speech requires that everybody holding views should express them, even in the presence of those who may not share them. This is at least one way in which progress is possible. The duty of a presiding officer is to preside and not take part in the proceedings, and especially on this occasion should I abstain because a host should never disagree with his guests.

Ladies and gentlemen, the floor is yours.

Professor QUINCY WRIGHT. Mr. Chairman, I am sure I am going to disappoint this organization, in view of the divergent opinions we have heard the last few days, in associating myself with everything which Mr. Hudson has said. I agree with him heartily that international law needs a philosophy and a method of development.

International law, the same as every other body of law, must keep *en rapport* with the facts as they are, and the international law which is based on the philosophy of three centuries ago is certainly not one which can function at the present time.

I had a very interesting experience yesterday in discussing this question in a committee. Mr. Hudson asked me if I had read the article of Dean Pound to which he referred, and I had to confess that I had not, and in order to make good the lacuna, while a very interesting discussion was going on this morning I absented myself in the library of the Carnegie Endowment and read that article.

The CHAIRMAN. I have also read it.

Professor QUINCY WRIGHT. I was sure you had, Mr. Scott. It is well worth reading, and the article which precedes it by Professor Vinagradoff is also worth reading.

The CHAIRMAN. I have also read that.

Professor WRIGHT. In that article there was one question which raised itself in my mind. Dean Pound starts with the assumption that international law in the eighteenth century had very much more influence than international law does today. He assumed that without arguing it. I am not certain that I would go with him on that. I am not certain that international law on the whole does not have about as much influence on the conduct of States now as it did in the days of the war of the Spanish Succession and the war of the Austrian Succession and the Seven Years' War and the other wars which decorate the pages of history of the eighteenth century.

There is, however, an interesting suggestion that he makes. Assuming that fact, he tries to explain it, and he says that the reason is that in the seventeenth and eighteenth centuries the analogy of the State to the individual was much more perfect than it is today; that in the seventeenth and eighteenth centuries international law governed the relation between individuals, individuals who happened to be autocratic monarchs, and, consequently, the analogy whereby a natural law, originating in the natural rights of individuals was transplanted to the relations of autocratic monarchs, had a certain reasonable basis.

Whether there is any difference to explain, or whether we can explain

it, I am not prepared to say, but I am pretty certain that the analogy does not apply today; that we cannot treat nations as individuals. The institutions of democracy, the necessity of consulting public opinion in the various States through very complicated procedures, through legislative bodies, through the executives, through the courts, sometimes through plebiscite or referendum, means that the States do not act with the precision and definiteness which characterizes the action of an individual. States also differ very widely in the type of organization which they have for performing acts of an international purport.

Now, I am convinced that this fact, the difference in the constitutional organization of States, is a very important matter in reference to the development of international law in the future. It may be that the type of sanction which was of value as against individual monarchs cannot, at least unless we develop a very much more elaborate machinery than we have today, affect vast populations which act through legislative bodies. It means that the problem of organization for the purpose of sanctioning international law is very different from that which prevailed two centuries ago.

With reference to the codification of international law, I want to emphasize my agreement with Mr. Hudson. I have never had any notion that attempts at universal and comprehensive codification of the law would be of great value. It seems to me that we must pursue the method of finding the specific points on which legislation is necessary and reaching an agreement on those. I think we must narrow the field, and that, of course, has been the method in which the common law has been developed through legislation.

Codification such as was undertaken by Justinian or by Napoleon is a process which marks the maturity of the law. I cannot think that it can mark the beginning of a law which in my opinion has gotten somewhat out of kilter with the existing state of the world. Consequently, I hope that the institutions which have grown up centering around Geneva for the gradual development of the law through codification will continue to confine their efforts to parts of the law where formal statement is necessary and practical. I am sure we can hope for a good deal from that kind of codification, but I am also convinced that certain universal objectives toward which this codification and other methods of developing the law may tend are necessary, and I hope that Mr. Hudson will some day offer us a philosophy toward which we can gradually make the law grow.

The CHAIRMAN. The Chair recognizes Mr. Andrews.

Professor ANDREWS. Mr. Chairman, I have been encouraged to make here a very brief report which might come as appropriately following Mr. Hudson's address as at any other time.

There is now in the hands of the professor of international law at the Charles University (Prague) a manuscript which might be used as one or two lectures upon international law. It will be used in the classes of that professor of international law this next year. It was prepared by the professor of international law of Tufts College. In turn the professor of international law at the Charles University is sending to Tufts College a similar manuscript containing material for one or two lectures upon certain topics of international law to be used by the professor of international law at that institution

The possibilities of this exchange of lectures (*not* lecturers) can be readily seen. At least, it occurs to me that the students of the Charles University will be able to watch the development of any special American international law, while the students of Tufts College can watch for any particular modification of European international law.

Mr. DENYS P MYERS. Mr. Chairman.

The CHAIRMAN. The Chair recognizes Mr. Denys P. Myers, who is not a teacher of international law but one interested in international relations.

Mr. MYERS. Mr. Hudson referred to the current functional development of international law, and it seems to me that a close view of one instance of that might be worth while. I have in mind the international Air Navigation Convention and Commission. In 1909 or 1910 it became obvious to a great many people throughout the world, certain Germans, Mr. Scott, Mr. Kuhn, Mr. Baldwin, Mr. Whiteley and some others in this country, that the air was really a third dimension in law and some attention to the law that was going to be applied to it was necessary.

A committee was formed, studies were made, and in 1912 and 1913 small diplomatic conferences were unsuccessfully held in London. After the World War the Paris Peace Conference developed an International Air Navigation Convention in October, 1919. That convention consisted of two parts, a convention establishing the general principles and a very long series of regulations. The convention established a commission, which is a continuous commission meeting about three times a year. Its effort was to get those rules and those regulations into force throughout the world.

There was some difficulty about the convention. The commission, studying that difficulty, worked out plans for revision. Eventually a protocol modifying the convention itself was signed, and, I believe, opens the way for American participation.

The commission itself—and this is the point to which I wish to draw attention—has the authority to modify the very extensive regulations attached to the convention. That commission is a technical commission, not a legal commission. It is technical in international air traffic. There are rules of the road, there are landing rules, there are marks to be carried by airplanes, and many other technical details.

Very recently I received a new revision of those regulations and they had practically been rewritten and by adoption of the commission made effective.

There is a machinery which not only produces a convention diplomatically but by the continuous operation of a commission ceaselessly brings a very complicated subject, constantly faced by new conditions and able to benefit by new experiences, up to date.

That functional development, of which this is only an illustration of what Mr. Hudson mentioned, is, I think, not only very significant, very satisfying for those of us who have to watch these things and follow them, but it is also very essential for the continuous development of international law on a sound and modern basis.

Professor POTTER. Mr. Chairman, I rise to express my feeling regarding the address which has been delivered, and to say one little thing regarding the disagreement among us to which reference has been made.

I hope that I express the feeling of all of us who are present in saying that to me the address which was delivered a few moments ago will always rank among the soundest and most inspiring to which I have ever listened. (*Applause.*) I am glad that I have expressed the feeling of those present.

In regard to the disagreements among us it occurs to me that we may be making two mistakes. We are familiar with the idea that we should not take our agreements too seriously. We are familiar with the idea that no matter what we agree upon the big world will continue more or less on its own course. It seems to me that the same thing is true with regard to our disagreements. We should not take our disagreements too seriously. As Mr. Hudson has pointed out, there are forces at work in the world, there are forces operating in the international society today, which are going on operating even though we

are unable to agree among ourselves regarding the description of those forces or the statement of the results to which they will lead.

A second inference to be drawn is one to which we might give more attention, namely, that the peril is ours if we do disagree. If the situation is as Mr. Hudson has described it, and I believe it is, then we are the only ones who will lose by frittering away our time in disagreements on points of form or points of procedure. This is not a Rotary Club luncheon, but the idea of getting together and cooperating and supporting this movement and taking our own small part in it seems to me to be one that deserves to be mentioned at this time.

Professor THORPE. This very learned paper I think we ought to appreciate. There are a good many members who have come to Washington who are not special instructors in international law. They are not special professors of international law, that is to say, the burden of instruction in international law falls sometimes upon the shoulders of men who have other work and this teaching of international law is not particularly their own.

Some time ago I was honored with a letter from Justice Holmes in which he speaks of the dogmas of the law. I have wondered whether it would not be helpful to the instructors and teachers of international law in the many colleges and universities of this country if committees were appointed by Mr. Scott or by Mr. Dickinson to lay down what the instructor in international law might recognize as the dogmas of the law.

Now, there is a great deal of time wasted in talking of the ethics, even of the common law, but if you knew what you were talking about you could have such a guidance put in the hands of the instructor and there would be a realization of that uniformity that would be eminently practical and desirable.

Last year, at the meeting of the American Institute of Law, I heard a member from California say they would sell their code for twenty-five cents. Well, codes have not been very successful in this country, and we know that next week we shall listen to remarks of learned people on the betterment of the law. I have looked through their pamphlets. Can we not do something of that kind in international law? Can we not have a simplification for the benefit of the instructors whose heads are in the air and their feet in the reminiscences of international law? Can we not get out something practical and do something uniform and work out a system or result which will be one of the steps toward that worthy end to which Mr. Hudson has referred? Whether it be

the act of God or the public enemy, I do not know; but at least it will make our work as teachers of international law in the United States more or less uniform and will make the young men and ladies who happen to hear our lectures at least lay actors in the great work that is before us.

Professor HARLEY. I have been very much interested in what Mr. Hudson has said, and it seems to me that the period since the World War has marked a very unusual crystallization of public opinion of the people of the United States as well as the people of the world in the matter of our international relations. Now, Mr. Hudson evidently attaches great significance to the fifty-five States which are now in the League of Nations as an instrument for the development of international law. I think that statement is justified not only from his general remarks, but particularly with reference to the statement of the functional development of international law, and the apparent disagreement with the proposed code for the Americas is not necessarily an indictment indicating that the Pan American Union or the organization of the Pan American States has not accomplished a very useful purpose in the promotion of international law, because the very existence of the Pan American Union, it seems to me, has made it possible for Pan American law to develop itself.

With your permission, I just want to take one moment to describe what seems to the speaker a very promising thing, a promising channel of promoting international law, the subject which holds the interest in our hearts now, and that is a point which Mr Hudson has apparently not stressed and which represents a recurring to the ideal expressed by Mr. Root, that you cannot have international law unless you have public opinion behind it.

We have on the Pacific Coast, particularly in California, what is called the Southern California Council on International Relations. I think it is worth while to call the attention of the members here very briefly to that conference, because it represents an effort to get public opinion interested in international relations.

Now, it was a spontaneous organization, so to speak, and it came about from an insistence on the part of well-known citizens of that community. Let me say that at the head of this movement is Dr. E. C. Moore, the Director of the University of California, Southern Branch; President Milliken, of the California Institute of Technology; and Henry M. Robinson, President of the First National Bank, et cetera.

Well, I may say that membership in that organization is held and

paid for by $25 memberships by such typical organizations as The Friday Morning Club, the Ebell Club, the Hollywood Woman's Club, the Los Angeles City Club, and many leading church and other service organizations. Individual memberships are $5.

As illustrating the great degree of development of public opinion, I would like to say that it holds an annual conference, and the second conference is being proposed for the coming June. It has periodical meetings, at which very good speakers appear, such as Lord Thompson, Henry M. Robinson, Captain Perigord, a naturalized Frenchman, President von Kleinsmid, University of Southern California, and so on.

The work is very promising there, it seems to me, as an instructor of international law, and, while it might not meet our particular needs, I feel that the teachers of international law in this country should build up that opinion, that interest in international law and relations which Mr. Root recommended a few years ago at one of the earlier meetings of this society.

Professor BLAKESLEE. Mr. Chairman, in the speaker's brilliant address, he has raised the interesting question whether international law is essentially global or essentially regional.

Now, passing that question aside for the moment, I should like to suggest that policy at least is essentially regional and not essentially global, and that this is particularly true of the policy of the United States. We have, to be sure, certain fundamental principles which are of universal application, such as the arbitration of international disputes and the freedom of the seas; but our most characteristic foreign policies are essentially regional. We have one set of policies for Europe, another for the Americas, and a third for the Pacific and the Far East. Of the interesting thirty draft treaties which have been referred to several times, I should like to submit that two of the most distinctive do not concern law, but policy. I refer to the projects which would make the governing body of the Pan American Union a Council of Conciliation, and which would unite all of the American republics in a declaration in support of the principle of the Monroe Doctrine.

So far as I am acquainted with the views of those interested in our foreign affairs—I believe you will support me in the statement—the great majority have felt for a number of years that two of the most important forward steps to be taken in American foreign policy are, first, to associate the Latin-American republics with the United States in the attempt to settle political differences arising between govern-

ments in this hemisphere, and, second, to induce if possible all of the American republics to join in at least a declaration of the Monroe Doctrine.

These two projects, which aim to accomplish these objects, are essentially political rather than legal. At the same time, they meet one of the greatest needs in the development of proper relations between the American republics. They represent policy; they are regional; and if they should be adopted, they would mark a notable development in the foreign policy of the United States. (*Applause.*)

Professor W. J. SHEPARD. I have been on the defense in the last year or two in regard to international law. I have been mingling with economists and I find that for the most part the economists of today look with a certain amount of suspicion upon international lawyers. They point to the fact that international law is as old as Grotius and that its concrete accomplishments up to the present time have been somewhat meager.

The economist's point of view, furthermore, is that the international lawyer is likely to approach his problem in the rarified atmosphere of legalistic syllogisms and that he does not come down to the concrete realities of economic and social conditions.

I think that is entirely an unjust criticism. I have been on the defense in trying to disabuse the minds of my colleagues on that point, but the fact that that opinion does exist is a thing, it seems to me, that such a society as this should take cognizance of. It seems highly important that the Society of International Law should put itself straight with sister professions with regard to the fact that it is taking cognizance of the economic and social factors that underlie the law.

I wonder, however, whether we are taking cognizance of those factors sufficiently. It seems to me that, just as in the field of municipal law, the most hopeful tendency of recent years has been that tendency of which Dean Pound has been the chief exponent, the tendency toward a sociological approach to our jurisprudence—just as that is true in the field of municipal law, so we ought to carry further the sociological approach to the subject of international law.

My economist friends point out that economic and social factors are important in international relations, and they are studying them, and when I talk about international law they talk about international trade; when I suggest that every student in social science should have a course in international law they come back with the proposition that every graduate in political science, especially in international law,

should have a course in international trade, and they point to the fact that trade is universal and that the difficulties between nations are to a large extent due to trade barriers, the differences of exchange rates, and the large number of commercial factors which the international lawyers ignore.

It seems to me that the success, for example, of our president, Mr. Hughes, back at the time that he first made his great reputation in the insurance cases, was the fact that he had thoroughly grasped the technique and the facts of the insurance business. I do not believe that any lawyer or any body of international lawyers or any body of lawyers in general can really perform their function satisfactorily in the rarified atmosphere of a legalistic approach. They must take very much more cognizance of the actual economic and social factors and that is the reason I approve so thoroughly of the paper read a few minutes ago.

Dr. SCOTT. Ladies and gentlemen, we should adjourn in a moment or two in order that the gentlemen present may attend the meeting of the executive council of the Society of International Law, and Mr. Hudson has asked to say a few words in conclusion.

Professor HUDSON. We all accept the leadership of the dean of our profession, Mr. Scott. We all love him for so many of his great qualities that it is a very painful thing to any of us to find ourselves in what Mr. Scott would think might be disagreement with him.

The disagreement, he reminds me, is with his views and not with himself. I thoroughly accept that qualification. I do not want anything I may have said to be interpreted as a lack of enthusiasm on my part for the work that Mr. Scott and Mr. Reeves are beginning.

Frankly, I should not have drawn some of the drafts which the American Institute has presented. But there is lots of opportunity for consideration of those drafts. Some of them seem to me altogether helpful, and I hope that there will be opportunity for a cooperative consideration among us of the drafts that are being considered from time to time. I should dislike my own expression to be rested on any misstatement of the aims of the American Institute of International Law and, lest some of you might have misinterpreted what I said about a special American international law, I should like to read a paragraph which Mr. Scott has called to my attention, and which perhaps I did not sufficiently take account of in what I said, although I had read it. This paragraph is from the general declarations offered to the Committee of Jurists, project No. 2, paragraph 2:

2. The American republics declare that matters pertaining especially to America should be regulated in our Continent in conformity with the principles of universal International Law, if that be possible, or by enlarging and developing those principles or creating new ones adapted to the special conditions existing on this Continent.

3. By American International Law is understood all of the institutions, principles, rules, doctrines, conventions, customs, and practices, which, in the domain of international relations, are proper to the Republics of the New World.

I hope, therefore, that you will permit me to modify the statement that I have made to do full justice to that general declaration in the second project to be placed before the Committee of Jurists.

Dr. SCOTT. Ladies and gentlemen, the time has approached for our adjournment.

May I add a word in closing? I recall an incident of many years ago, when I was a student in Germany. The professors of that country have a habit of meeting in conference and I am glad to say that our Americans are developing that habit. As a result of these conferences, they have hit upon a definition of the German professor. I do not say that it applies here, but I would like to quote it. My friend Professor Hart will know what I mean. The definition of a German professor, given by the teaching profession in Germany, is "a man of another opinion."

Professor STANWOOD. Before we adjourn, I would like to move a rising vote of thanks to the Carnegie Endowment, through Mr. Scott, for the hospitality they have extended to us as teachers; and also to Mr. Hudson for the brilliant and admirable report with which he inspired us. (*Applause.*)

(Whereupon, at 2.30 o'clock p. m., a recess was taken until Saturday, April 25, at 2 o'clock p. m.)

FINAL SESSION

Saturday, April 25, 1925, at 2 o'clock p. m.

The Conference of Teachers of International Law and Related Subjects met, pursuant to adjournment, at the New Willard Hotel at 2 o'clock p.m., with Professor JAMES W. GARNER, University of Illinois, in the chair.

The CHAIRMAN. The Conference will please come to order. The hour is past for the opening.

Professor Dickinson, I think, has some announcements to make before we proceed.

Professor DICKINSON. I want simply to ask the chairman of each of the seven committees to be sure to hand in, either to me or to some one of the officers of the Endowment, the final texts of their committee reports before leaving.

I want also to suggest that there is other material which has been brought together by some of the committees which they will not have adequate opportunity to present this afternoon. I think that this material ought to go into our printed proceedings. Some of the committees have conducted quite detailed investigations, circulated questionnaires, and acquired a good deal of useful information. I take it that it would be the sense of every one here that that material ought to be printed. As a starting point, therefore, I am going to ask, unless some one proposes to overrule me in the matter, that the chairmen of those committees which have prepared more or less elaborate reports on matters of fact put those reports into shape for publication along with the resolutions and turn them in at their early convenience, either to me or to some official of the Endowment.

Finally, will the chairman of each committee see to it that we have complete and accurate lists of those who have associated themselves with the committee in each instance. That is the only way that the proceedings can be made to show who actually participated in the work of the different committees. Please be sure to turn that information in, either to me or to some one connected with the Endowment.

The CHAIRMAN. Before proceeding, I want to make an announcement I have been asked to make, namely, to call the attention of the teachers of international law to the exceptional work that is being done

by the Academy of International Law at The Hague, the third annual session of which meets this year. Some of you have attended the Academy of International Law, either as lecturers or otherwise, and you know very well the character of the work that is being done there. Now, I am sure that the members of this Conference will be interested in that work, and it is requested that you call the attention of your graduate students to the courses offered at the Academy.

Now, we have this afternoon to consider the reports of seven committees. I am going to conform to the suggestion made by the Director of the Conference that we have the texts of the committee reports read in turn and without any argument or discussion by the chairman who presents the report until they have all been read and until we are ready to take up each report in turn.

Now, the first committee has been charged "to consider plans for increasing the facilities for the study of international law; for placing the instruction on a more uniform and scientific basis; and for drawing the line between undergraduate and graduate instruction." The chairman of that committee is Professor Hull of Swarthmore College, who will now present the report of the committee.[1]

Professor HULL. Mr. Chairman, in regard to Mr. Dickinson's request for information which has come into the hands of the chairmen of the committees, I would say that it is not in my hands, but there are several members who have supplied the committee with some very valuable information and ideas in writing, and I would like the privilege of requesting them to get that information to you or to Mr. Dickinson.

Our committee did not deal with all three of the things which our chairman has just read. The 1914 Conference had dealt with the

[1] Committee No. 1: William I. Hull, Swarthmore College, *Chairman;* Kenneth Colegrove, Northwestern University, *Secretary;* Freeman H. Allen, Colgate University; Joseph W. Bingham, Stanford University Law School; Charles K Burdick, Cornell University College of Law; Carl Christol, University of South Dakota; Herman B. Chubb, University of Kansas; D. Shaw Duncan, University of Denver; Clyde Eagleton, New York University; Ellen D. Ellis, Mt. Holyoke College, Charles G. Fenwick, Bryn Mawr College; Emerson D. Fite, Vassar College; Karl F. Geiser, Oberlin College; Edward A. Harriman, George Washington University Law School; Frank I. Herriott, Drake University; Charles Hodges, New York University; Manley O. Hudson, Harvard Law School; Philip C. Jessup, Columbia University; John H. Latané, Johns Hopkins University; S. Gale Lowrie, University of Cincinnati; Joseph Manley, Marietta College; Charles E. Martin, University of California, Southern Branch; Denys P. Myers, World Peace Foundation; Barnette Miller, Wellesley College; Jesse S. Reeves, University of Michigan; Daniel C. Stanwood, Bowdoin College; Irvin Stewart, University of Texas; Ellery C. Stowell, American University; George Grafton Wilson, Harvard University; Herbert F. Wright, Georgetown University; Quincy Wright, University of Chicago; Henry M. Wriston, Wesleyan University.

second duty rather fully and we confined our work this time chiefly to plans for increasing the facilities for the study of international law. I am going to ask the chairman if he will permit me to call upon our secretary to read the resolutions of that committee.

The CHAIRMAN. Will the secretary of Committee No. 1 kindly read the drafts of the resolutions adopted by the committee?

Professor COLEGROVE. Resolution No. 1 is as follows:

> *Resolved*, That the Conference should effect a permanent organization with periodical meetings, and that the Director of the Conference be requested to appoint a committee to effect a permanent organization with power to act.

Resolution No. 2 reads:

> *Resolved*, That this Conference take note of the inaccessibility of judicial decisions and legislation of various countries relating to international law and expresses the hope that some means may be found for compiling such decisions and legislation and making the compilations generally available.

Resolution No. 3:

> *Resolved*, That the Chairman of the Conference appoint a Committee on Publications to consider the desirability of promoting: (1) a dictionary and encyclopedia of international law; (2) a treaty collection in English including the periods covered by Dumont and Martens down to date, compiled by a cooperating committee of scholars; (3) preparation of lists of books for small libraries and for larger libraries.

Resolution No. 4:

> *Resolved*, That a memorial be sent to the Carnegie Endowment for International Peace proposing collaboration with other associations for a larger bibliographical compilation or guide for cases, treaties and official documents on international law.

Resolution No. 5:

> *Resolved*, That the Conference favors the preparation of book lists containing the titles of those works which are most useful for the study of international law and international relations; and that we should welcome any effort looking to adequate collections on those subjects in college libraries throughout the country.

Resolution No. 6:

> *Resolved*, That the Director of the Conference appoint a committee with power to act and add to its number, to communicate

with the Secretary of State or other officials in order to request that treaties, diplomatic correspondence and other documents of value in the study of international law be made more easily and more immediately available for students of international law and international relations.

Resolution No. 7:

Resolved, That the Conference expresses its appreciation of the monumental service to the study and practice of international law rendered by Judge John Bassett Moore in his scholarly *Digest of International Law*, and expresses the hope that jurists and teachers may have the advantage of a continuance of this invaluable achievement.

Resolution No. 8:

Resolved, That the Conference deems it desirable that the United States Treaty Series be placed on sale by the Superintendent of Documents so that libraries, teachers and others may secure this essential documentation on a subscription basis.

Resolution No. 9 — and this was a compromise resolution:

The Conference notes that in addition to the instruction in international law there is a variety in the courses in various colleges dealing with international relations. The Conference recognizes the special needs of undergraduate instruction in international law as well as of professional and graduate instruction. The Conference favors the development of undergraduate courses in international relations including the trade and economic relations as well as in international organization. The Conference also recognizes that a special kind of technical instruction in international law should be given in graduate and professional courses and it favors the separation of courses in international relations from courses in international law.

Resolution No. 10:

The Conference notes with great satisfaction the measures that have been taken by the Carnegie Endowment for International Peace in fulfilment of the resolution of the Conference of 1914 with reference to the establishment of Fellowships for the study of international law; and the Conference desires to express its gratitude to the Endowment for the Fellowships that have been established which have already yielded such excellent results. The Conference ventures to express the hope that the number of these Fellowships for both students and teachers may be increased in the future and that the stipend allowed may also be increased.

The CHAIRMAN. Now, apparently, some of these resolutions are going to be rather long and detailed, and it has occurred to me since I made the announcement at the outset that we would have the reading of all these resolutions in succession and then come back to a discussion of them, that possibly it is going to involve the reading of these resolutions twice if we adopt that procedure and that possibly, therefore, it might be a saving of time if we should proceed at once and discuss these resolutions after they are read.

Mr. Dickinson, you made this suggestion, and I foresee that after we have read the resolutions of the six other committees and come back to the resolutions of Committee No. 1, we shall have to read them all over again.

Professor DICKINSON. The only difficulty, Mr. Chairman, is that probably we shall never get beyond the report of Committee No. 1 if we do not follow the course just started. I do not know, I am sure, the better way to proceed.

Professor HULL. May I suggest that Committee No 1 has had by far the larger number of resolutions. I do not believe the other committees will inflict so many upon the Conference. Perhaps, with that thought in view, it might be well to have the whole body of resolutions placed before us first.

The CHAIRMAN. The Chair will proceed in accord with the original announcement, and we will now hear the draft of Committee No. 2, "to consider the question of requiring a knowledge of the elements of international law for candidates for advanced degrees."[1]

Professor BLAKESLEE. Mr. Chairman, our resolution is brief and simple. It reads:

> *Resolved*, that this Conference recommends that a letter prepared in cooperation with the committee be sent to the deans of graduate schools and to the chairmen of departments of political science and of history in the universities and colleges throughout the country, urging them to recognize the indispensable character of a knowledge of the elements of international law for the proper training of any candidate for an advanced degree in political science or history.

[1] Committee No. 2: George H. Blakeslee, Clark College, *Chairman;* R. F. Cornell, Kalamazoo College; James W. Garner, University of Illinois; Thorsten Kalijarvi, University of New Hampshire; Frank J. Laube, University of Washington; Pitman B. Potter, University of Wisconsin; Walter J. Shepard, Brookings Graduate School; Herbert F. Wright, Georgetown University.

The CHAIRMAN. We will listen next to the resolution of Committee No. 3, "to consider the advisability of urging all institutions with graduate courses in law to add a course in international law where not already given." The chairman of that committee is Professor Robinson of Boston University Law School.[1]

Professor GUSTAVUS H. ROBINSON. Mr. Chairman and members of the Conference, I looked into a number of catalogs and discovered that the subject of the instruction in graduate courses of international law was not particularly important, and I looked then into the general question of instruction in international law in the law schools and found that it was pretty generally not done, so I ventured to reread my mandate to include both the graduate and the undergraduate instruction in law, and the resolution of the committee is in conformity with that reading of the mandate, as follows:

> That, in view of the increasing contact of professional practice with international law topics, and in view of our national habit of staffing governmental offices from the legal profession, and in deference particularly to the American Bar Association's standing resolution that international law be made a bar examination subject, this Conference of Teachers of International Law urges:
>
> (1) That international law be required of students seeking graduate degrees in law; (2) That courses in international law be offered to and recommended to all law students; and (3) That the first course be expository and professional in character and be given by a member of the law school faculty.

The CHAIRMAN. Committee No. 4, "to consider the advisability of calling the attention of the State bar examiners to the importance of requiring some knowledge of the elements of international law in examinations for admission to the bar." The chairman of that committee is Professor Middlebush, of the University of Missouri.[2]

Professor MIDDLEBUSH. Mr. Chairman, the committee has adopted the following resolution:

> In view of the fact that the American Bar Association in its annual meeting in 1916 adopted a resolution favoring the in-

[1] Committee No. 3: Gustavus H. Robinson, Boston University Law School, *Chairman;* Cephas D. Allin, University of Minnesota; Edwin B. Borchard, Yale University Law School; George E. G. Catlin, Cornell University; Thomas H. Healy, Georgetown School of Foreign Service.

[2] Committee No. 4: F. A. Middlebush, University of Missouri, *Chairman;* Niels H. Debel, Goucher College; Charles E. Hill, George Washington University; Manley O. Hudson, Harvard University Law School; Daniel C. Stanwood, Bowdoin College.

clusion of international law as a required subject for admission to the bar;

Your Committee adopts as its report to the Conference of Teachers of International Law the appropriate parts of the resolution of the American Bar Association of 1916, and this is the quotation from that report:

Your Committee is newly impressed with the greatly increased importance of our international relations which now occupy the attention and involve the vital interests of all classes of our people. Its members would urge upon the gentlemen of the bar, who are the custodians, expounders, and defenders of all law, both municipal and international, that the rules of international justice and humanity established by custom or agreement ought not to be omitted in the requirements for admission to practice at the bar. They therefore respectfully recommend that reasonable and competent acquaintance with international law should be required by including the law of nations as a required topic in examinations for admission to the bar.

These recommendations are made with reference not solely to the lawyer as a practitioner, but with reference also to his large and often controlling part in shaping a just public opinion and national policy.

The CHAIRMAN. We are now ready for the report of Committee No. 5, "to consider the advisability of requesting the American Bar Association, through its appropriate committee, to consider the question of including the study of international law in its recommendations for a deeper and wider training for admission to the bar." In the absence of Mr. Thorpe, chairman of that committee, Mr. Dickinson will present the report.[1]

Professor DICKINSON. This report is somewhat unique in its brevity as well as in other respects. The prior Conference made an affirmative recommendation, and the American Bar Association has taken action almost as we recommended. So the present report is as follows:

Resolved, That the Conference records its satisfaction in the action taken by the American Bar Association in including the subject of international law in its recommendations for a deeper and wider training for admission to the bar.

The CHAIRMAN. Committee No. 6, "to consider the desirability and feasibility of plans for securing the services of professors of or lecturers on international law to whom can be assigned definite lecture

[1] Committee No. 5: Francis N. Thorpe, University of Pittsburgh, *Chairman;* Bruce Williams, University of Virginia; George Grafton Wilson, Harvard University.

periods in institutions where international law is not now taught or is inadequately taught, the services to rotate between institutions where they will be acceptable." Professor Andrews of Tufts College is the chairman of that committee.[1]

Professor ANDREWS. Mr. Chairman and members of the Conference, this report has certain resolutions and then certain comments. The first resolution is:

> *Resolved*, That upon the initiative of institutions where the instruction in international law is lacking, steps should be taken for providing such instruction by visiting professors or lecturers in the regular semesters as well as in summer sessions, to be given preferably as part of regular courses or as full semester courses rather than in isolated lectures and with assigned collateral reading sufficient to justify college credits. This instruction should be upon substantive principles but may be approached through the presentation of popular questions of general interest, and should be given in a scientific spirit and not in the interests of any propaganda.

The second resolution is:

> *Resolved*, That a committee be appointed by this Conference to ascertain the institutions in need of additional instruction in international law, and to endeavor to find means of affording such assistance as may be necessary to the instructing staff of the said institutions or of supplying this additional instruction by lecturers, chosen by this committee and approved by the executive committee of this Conference.

The third resolution is:

> That this Conference of teachers bring to the attention of every college, university and other school not offering at present instruction in international law the importance of this subject and the readiness of this Conference to cooperate in introducing or stimulating such instruction.

The fourth resolution:

> That this Conference take steps to secure adequate funds for the payment of stipends and traveling expenses to the visiting professors.

[1] Committee No. 6: Arthur I. Andrews, Tufts College, *Chairman;* Philip Marshall Brown, Princeton University; James M. Callahan, West Virginia University; Charles G. Fenwick, Bryn Mawr College; C. O. Johnson, University of North Dakota; James L. Tryon, Massachusetts Institute of Technology.

Those are the resolutions. Then the committee makes these comments:

> In supplementing these resolutions, the committee points out that they comprise merely a more emphatic and definite restatement of its position in 1914. The time now seems more propitious for action to carry out these recommendations. The need is just as great; the attitude of the smaller colleges is likely to be fully as favorable as ten years ago.
>
> It is suggested that circuits might easily be arranged whereby several colleges and universities could in turn be given the opportunity to hear the lecturers sent out and use the lectures in the ways mentioned in the resolutions.
>
> It is regarded as feasible and advisable that the visiting professor be retained at least one-half year during which he will devote his entire working time to this particular work. It may readily happen however that colleges more or less isolated may best be served by some lecturer taken from a nearby institution.
>
> While it would not be feasible to charge the salary of the visiting professor, or in general his traveling expenses, against the colleges or universities served, it would seem proper to expect each institution to provide entertainment for the lecturer while present on its campus.
>
> The committee is impressed with the live character of its work, and it believes that this topic should be included in the agenda of future conferences on the teaching of international law.

Some of the phraseology, such as the reference to the executive committee of this Conference, might have to be amended, but that can easily be done at a future time.

The CHAIRMAN. Committee No. 7, "to consider the advisability of requesting universities which now have summer schools to include among the subjects offered courses on the elements of international law, and, if there be occasion for it, to offer advanced courses of interest and profit for advanced students and instructors." Professor Stuart, of Stanford University, is chairman.[1]

Professor STUART. Mr. Chairman and members of the Conference, Committee No. 7 has the following report to make:

> Considering the fact that summer schools now exist in some eighty-five American universities and colleges, and that the

[1] Committee No. 7: Graham H. Stuart, Stanford University, *Chairman;* John Eugene Harley, University of Southern California; Amos S. Hershey, Indiana University; Frank E. Hinckley, University of California; Harold S. Quigley, University of Minnesota; Elbert D. Thomas, University of Utah; Quincy Wright, University of Chicago.

student body of such schools is largely composed of teachers in the various school systems, and that at the present time courses in international law are given in less than one third of these institutions, this conference hereby recommends that all universities and colleges having summer schools offer elementary courses in international law and related subjects, and advanced courses whenever the conditions warrant it.

The Conference further recommends that the teaching of such courses be carried on as far as possible by those who by training and experience are thoroughly qualified, and as a practical means of obtaining this result exchange of teachers be facilitated as far as possible by this organization.

The Conference recommends that a copy of these resolutions be sent to the directors of the summer sessions and also be brought to the attention of the directors of extension divisions of all colleges and universities concerned.

The CHAIRMAN. Ladies and gentlemen, you have now heard the reading of the texts of the resolutions of the committees. We are now ready to consider these reports.

Professor STOWELL. At the request of the chairman of the committee, I make a suggestion in regard to the consideration of report No. 1. In going over these and conferring with the gentlemen just now, I think I am expressing a view in which I believe all concur, that several of these resolutions would not require any discussion. I would suggest, therefore, and make a motion that we consider these which I will enumerate as not likely to require any discussion, first, and then pass on to those that might. I suggest that—

Professor HUDSON (interposing). Would we not save time just to read each one and act on that one at the time?

Professor STOWELL. I do not believe so, because I shall have a good deal to say on some.

Professor HUDSON. Could you not just read those that will not involve any debate first?

The CHAIRMAN. If you will enumerate the reports that will probably not require very much debate, we will proceed with those first, if that is the wish of the Conference.

Professor STOWELL. Resolution No. 7.

Professor MARTIN. I am impressed with Professor Hudson's suggestion. I think they ought to be read, one by one, and then ask unanimous consent to approve them. I think we will save time in that way.

Professor STOWELL. I think, to save time, there ought to be a limit on debate.

The CHAIRMAN. It was the intention of the Chair, in the absence of instructions to the contrary, to enforce the five-minute rule. He desires to call the attention of the Conference to the fact that we have seven reports here and that our time is limited, and that it is essential that members of the Conference speak to the point and keep within the time limit agreed upon, whether it is five minutes or some other period.

Professor POTTER. In spite of the fact that everything seems to be directed to cutting down the amount of work, I rise to inquire whether it will be proper to introduce resolutions from the floor apart from committee reports, and, if so, whether those resolutions should be introduced at the beginning of the discussions or now or after the conclusion of the discussion of committee reports?

The CHAIRMAN. It was the idea of the Chair that those resolutions should come at the end. There is no reason why, however, if the Conference wishes to do so, it should not adopt a different procedure.

Professor COLEGROVE. In connection with the same matter that Mr. Potter has raised, would it be in order to have a motion that a vote on each resolution be taken fifteen minutes after the discussion on each resolution begins?

The CHAIRMAN. If the Chair may express an opinion on that point, he doubts the expediency of it, because these reports are varying in importance. They will doubtless require varying periods of time for discussion, and it seems to him that it would be unfortunate to adopt a fifteen-minute period for each report. Some may require more than fifteen minutes; some may deserve less.

Professor DICKINSON. I move that we proceed to take up the report of Committee No. 1, and that we proceed with the discussion under the five-minute rule.

(Several members seconded the motion.)

The CHAIRMAN. If I understand Mr. Dickinson's motion, it is that we proceed with Committee Report No. 1. Is it the understanding of the Conference that the speeches shall be limited to five minutes?

Professor HULL. May I make an appeal for a three-minute rule instead of a five-minute rule? In a conference like this, almost everything that one can say everyone else knows, and certainly three minutes ought to be ample.

(The motion for a three-minute limit was seconded.)

The CHAIRMAN. Then the motion to amend is that we proceed with report No. 1 and that the discussions be limited to three minutes; and the Chair takes the liberty of emphasizing the desirability that the remarks be made to the point.

The chairman of Committee No. 1 is Professor Hull. I take it the chairman of the committee is entitled to open the discussion.

Professor HULL. Resolution No. 1 is:

> *Resolved*, That the Conference should effect a permanent organization with periodical meetings, and that the Director of the Conference be requested to appoint a committee to effect a permanent organization with power to act.

Professor HUDSON. I move its adoption.

(The motion was seconded.)

The CHAIRMAN. Is there any discussion of that motion?

(No response.)

(The motion was carried.)

Professor DICKINSON. Mr. Chairman, I am a little late. May I ask that that be read again? I think that there is a technical error in it, as it refers to a "Director of the Conference." There is no Director of the Conference. I happen to be the Secretary of the Conference.

Professor HULL. The Committee on Revision this morning assumed the privilege of changing Mr. Dickinson's title.

Professor DICKINSON. That is an exceedingly undemocratic procedure.

Professor HULL. It is in the hands of the Conference to call him secretary or director. The Committee on Revision preferred "Director."

Professor COLEGROVE. No action need be taken on that this afternoon. I should mention that we just met and passed this, and the Committee on Organization may change the title if it pleases. This is but a temporary office. The Committee on Organization is expected to draw up a constitution.

The CHAIRMAN. Then this is adopted subject to the change that may be made by the committee.

Professor HULL. The next resolution is:

> ***Resolved***, That this Conference take note of the inaccessibility of judicial decisions and legislation of various countries relating to international law and expresses the hope that some means may

be found for compiling such decisions and legislation and making the compilations generally available.

The CHAIRMAN. The committee makes no suggestion as to how they may be found?

Professor HULL. We thought we had better leave that to the permanent organization.

The CHAIRMAN. The motion has been made and seconded that this resolution be adopted. It is now open for discussion.

(The resolution was carried.)

Professor HULL. Resolution No. 3 reads:

> *Resolved*, That the Chairman of the Conference appoint a Committee on Publications to consider the desirability of promoting: (1) a dictionary and encyclopaedia of international law; (2) a treaty collection in English including the periods covered by Dumont and Martens down to date, compiled by a cooperative committee of scholars; and (3) preparation of lists of books for small libraries and for larger libraries.

The CHAIRMAN. May the Chair ask who is the "Chairman of the Conference"?

Professor HULL. It should be the "Director."

Professor HUDSON. I wonder if the second part of that is worded exactly as it came up to the committee? As it came to the committee, it read "down to the beginning of the League of Nations series."

Professor HULL. May we include that in the revised resolution, if the Conference will accept that change?

The CHAIRMAN. You have heard the motion. Is there any discussion of it?

Professor HINCKLEY. I think the treaty program is an exceedingly ambitious one, that if ever undertaken seriously it might and would better be undertaken by an organization much more permanent and with greater resources than we have. If, however, we express it only as a wish that we might have some of this material selected and available, it would be more within the limited means of our Conference.

Professor COLEGROVE. May I call attention to the fact that this resolution merely calls upon a committee to consider the advisability of the undertaking. The report, of course, will then go to the Conference, where a discussion will take place.

Professor HULL. The resolution is "to consider the desirability of promoting" in any way which the committee may deem best.

The CHAIRMAN. Is there any further discussion?

(No response.)

(The resolution was adopted.)

Professor HULL. The next is:

> *Resolved*, That a memorial be sent to the Carnegie Endowment for International Peace proposing collaboration with other associations for a larger bibliographical compilation or guide for cases, treaties and official documents on international law.

Professor POTTER. Does that intend collaboration by the Endowment or by the Conference?

Professor HULL. I must confess that the phraseology would seem to imply collaboration by the Endowment, but I fancy, Mr. Potter, that our committee referred to your first alternative, that the Conference itself should cooperate with the Carnegie Endowment and other associations, and that it should not be left entirely to the Carnegie Endowment. Is that the understanding of the committee?

Professor BORCHARD. As perhaps the initiator of that motion, may I say that the desire was to bring about a subsidy by the Carnegie Endowment for such a bibliographical enterprise, to be undertaken by scholars in this country and others to be appointed in any way that either this Conference or the Carnegie Endowment might see fit. I take it that the men who would be drawn upon in this country would not be many, so it does not make any difference how the phrase runs. While the Carnegie Endowment will select the men who will prepare the bibliography, the important thing is to get this Conference on record as feeling and expressing the need for bibliographical aid in reaching their materials.

Professor HULL. May I ask Mr. Borchard if he sees any possibility of this Conference collaborating usefully with the Carnegie Endowment?

Professor BORCHARD. Presumably the men would come out of this Conference.

Professor HUDSON. I move the adoption of the resolution.

(The motion was seconded and carried.)

Professor HULL. The next resolution is:

> *Resolved*, That the Conference favors the preparation of book lists containing the titles of those works which are most useful for the study of international law and international relations; and that we should welcome any effort looking to adequate collections on those subjects in college libraries throughout the country.

Professor HUDSON. I am very much opposed to that resolution. I think there is such a list in every treatise on international law, and unless somebody can see some way of providing colleges with libraries I do not see any necessity of the Conference acting in such a way.

Professor STOWELL. I think that that is covered by the Committee on Publications. They could do that without any further action on our part. I suggested that and I should be glad to have it withdrawn.

Professor QUINCY WRIGHT. Is not a considerable part of that covered by a resolution previously passed, which had reference to the preparation of lists for small colleges? It seems to me that it adds very little to that.

Professor HINCKLEY. I also oppose this resolution, as others, and we should personally be reminded that if we keep ourselves within the limit we may have some reasonable expectation of joy in full success. The program so far outlined is an almost world-reforming suggestion, and I fully agree with my friend Mr. Hudson as to its impracticability.

Professor FENWICK. We have not heard any defense from those who have proposed it.

The CHAIRMAN. Is there any one who will arise to defend it?

Professor STOWELL. Every now and then we are asked to suggest published lists for public libraries. I do not wish to delay by any further explanation or discussion, but I should like to suggest that public libraries be mentioned in the resolution as well as college libraries. I have been asked here in Washington to suggest for the Carnegie Public Library an appropriate list. I found it would take too much time, and did not like to assume responsibility for putting in my own ideas. This seems a very appropriate field for our action. Such a list should be signed by those who proposed it so that it would not go out from the teachers' Conference as their list, but, as the work of the committee.

Perhaps, however, this is covered by the other committee.

Professor HULL. The other resolution that Mr. Stowell referred to is Resolution No. 4, which refers to the committee to be appointed by the Director in the preparation of lists of books for small libraries and for other libraries. This subsequent resolution apparently has to do with lists of books for the study of international law and international relations in colleges. I think that that was the distinction made by the presenter of the motion.

(A motion was made and seconded that the resolution be adopted.)

The CHAIRMAN (after putting vote). The motion appears to be lost.

Professor HULL. The next resolution is:

> *Resolved*, That the Director of the Conference appoint a committee with power to act and add to its number, to communicate with the Secretary of State or other officials in order to request that treaties, diplomatic correspondence and other documents of value in the study of international law be made more easily and more immediately available for students of international law and international relations.

The CHAIRMAN. You have heard the resolution. Is there a motion to adopt it?

(A motion was made and seconded that the resolution be adopted.)

The CHAIRMAN. It is now open for discussion.

(No response.)

(The motion was carried.)

Professor HULL then introduced the resolution relative to the completion of the Honorable John Bassett Moore's Digest of International Law. After discussion, the resolution was adopted in the following form:

> *Resolved*, That the Conference expresses its appreciation of the monumental service to the study and practice of international law rendered by the Honorable John Bassett Moore in his scholarly Digest of International Law, and expresses the hope that if and when the Department of State decides to authorize the free and unrestricted editorial examination and use of the entire diplomatic correspondence of the United States since 1901, as was done with that prior to 1901, Judge Moore be invited to publish a supplementary volume to his Digest of International Law, the original work in eight volumes to remain unaltered.
>
> *Resolved*, That copies of this resolution be sent to the Secretary of State and to Judge Moore.

Professor HULL. The next resolution is:

> *Resolved*, That the Conference deems it desirable that the United States Treaty Series be placed on sale by the Superintendent of Documents so that libraries, teachers and others may secure this essential documentation on a subscription basis.

Professor HUDSON. I move its adoption.

Professor POTTER. Would it not be useful to include some provision for a communication of this resolution to some authority with power to act? The committee appointed to communicate with the Secretary of State or other public officials might well take it under its wing, but

if the resolution is adopted without any provision for being communicated to some one it may not be effective.

Professor HULL. Would you accept an added phrase—"and that this resolution be referred to the appropriate committee of the Conference for action."

Professor POTTER. Yes.

Professor STANWOOD. Would not that naturally be referred to the Committee on Publications?

Professor HUDSON. No, because we have a special committee to make a visit to the Secretary of State. We are not there dealing with any new publications; we are dealing with an effort to make existing publications available.

Professor QUINCY WRIGHT. I should think that would almost be included in the resolution we just passed in regard to making the materials of the Department of State more available. I would move that the specific reference be included in Resolution No. 6.

The CHAIRMAN. You have heard the suggestion. Is there any discussion of that suggestion?

Professor COLEGROVE. Mr. Chairman, the two resolutions are somewhat different. One concerns the Secretary of State and the other concerns the Superintendent of Public Documents.

Professor HUDSON. One covers the Secretary of State or other officials.

Mr. MYERS. I think I suggested the resolution, and perhaps it requires some explanation. The situation is that the Treaty Series is already issued by the Government Printing Office but at the expense and under the custody of the Department of State. It is desirable, and I understand that the Department would welcome, a wider distribution if the Superintendent of Documents would assume charge of it, and it seems to me so long as the Treaty Series is mentioned specifically and the reference to the Superintendent of Documents is maintained, that there is no objection whatever in consolidating this resolution with the other one. The main thing to do is to be specific as to the name and the relationship of the Superintendent of Documents toward it.

The CHAIRMAN. The question is, then, on the motion to consolidate these two resolutions. Those in favor of the motion say Aye.

Those opposed, No.

(The motion was carried.)

Professor HULL. The next is:

The Conference notes that in addition to the instruction in international law there is a variety in the courses in various colleges dealing with international relations. The Conference recognizes the special needs of undergraduate instruction in international law as well as of professional and graduate instruction. The Conference favors the development of undergraduate courses in international relations including the trade and economic relations as well as in international organization. The Conference also recognizes that a special kind of technical instruction in international law should be given in graduate and professional courses and it favors the separation of courses in international relations from courses in international law.

Professor HINCKLEY. I move its adoption.

The CHAIRMAN. Is there any discussion?

Professor POTTER. If I heard the reading of the resolution right, the adjective "graduate" is inserted at a point where it seems to me the insertion might do some harm. It is said that in addition to the courses in international law we favor the establishment of graduate courses in international relations.

Professor HULL. It recognizes the special need.

Professor POTTER. Yes. Now, it seems to me that we ought to recognize a need for the additional courses in these other subjects without, by implication at least, if not by the very phraseology of the resolution, limiting it to graduate courses.

Professor HUDSON. I suggest that we have the resolution read again.

(The resolution was again read.)

Professor QUINCY WRIGHT. I am wondering whether that reference to special courses is not completely covered by the previous reference to the special need of undergraduate as well as graduate and professional courses? It seems to me that that is simply tautology.

Professor HULL. The second sentence has to do with the place of international law. We believed there was a place for the instruction of international law in the undergraduate departments as well as in the professional and the graduate schools.

Professor HUDSON. May I ask the Chairman if it does not say the "special needs" of courses?

Professor HULL. Yes.

Professor HUDSON. The object of the resolution was to recognize the special character of courses in international law which may be given as undergraduate courses and the special character of those which may be given as graduate and professional courses.

Professor QUINCY WRIGHT How does the next sentence add to that? It says that the Conference recognizes that a special kind of technical instruction, and so forth.

The CHAIRMAN. Is there any further discussion?

(No response.)

(The resolution was adopted.)

Professor HULL. The last resolution reads:

> The Conference notes with great satisfaction the measures that have been taken by the Carnegie Endowment for International Peace in fulfilment of the resolution of the Conference of 1914 with reference to the establishment of Fellowships for the study of international law; and the Conference desires to express its gratitude to the Endowment for the Fellowships that have been established which have already yielded such excellent results. The Conference ventures to express the hope that the number of these Fellowships for both students and teachers may be increased in the future and that the stipend allowed may also be increased.

(It was moved and seconded that the resolution be adopted.)

The CHAIRMAN. Is there any discussion on this?

(The resolution was adopted.)

The CHAIRMAN. That completes the work of Committee No. 1.

Now, Committee No. 2, of which Mr. Blakeslee is chairman.

Professor BLAKESLEE. Mr. Chairman, the unanimous report of Committee No. 2 is:

> *Resolved*, that this Conference recommends that a letter prepared in cooperation with the committee be sent to the deans of graduate schools and to the chairmen of departments of political science and of history in the universities and colleges throughout the country, urging them to recognize the indispensable character of a knowledge of the elements of international law for the proper training of any candidate for an advance degree in political science or history.

The CHAIRMAN. Have you any explanation or defense?

Professor BLAKESLEE. Yes. The question which the committee was asked to pass upon was whether international law should be required of a candidate for any advanced degree. The committee unanimously agreed that it was not advisable to make a request that international law be required for any advanced degree, since such requirement would violate the generally established elective principle which is the basis of graduate instruction. That would naturally come first and then the resolution would come afterwards. The committee

felt that the most that could be done with propriety was to send a letter asking that the indispensable character of the elements of international law be stressed by the deans and the heads of departments of political science and of history.

The CHAIRMAN. In other words, while the committee does not feel that it is advisable to require it, it is desirable that the attention of professors should be called to the desirability of taking this subject.

Professor BLAKESLEE. Quite so.

Professor ANDREWS. Just a slight suggestion. I think if the committee sent that letter to the professors concerned and not merely to the heads of departments, there would be better results.

Professor DUNCAN. Is the understanding there with respect to the heads of the departments of political science that it shall go to the heads of departments in graduate schools or in undergraduate schools?

Professor BLAKESLEE. The question propounded to this committee related entirely to graduate work.

Professor HINCKLEY. Did the committee consider economics? Is that purposely omitted?

Professor BLAKESLEE. It did, and after some discussion I believe it was finally a unanimous vote that it would not be desirable to ask the heads of departments of economics and sociology to stress the importance of international law. It was felt that the appeal would be stronger if it were confined to the departments of political science and history. There was at first some difference of opinion in the committee on that, although the final report was unanimous.

(It was moved and seconded that the resolution be adopted.)

The CHAIRMAN. Is there any desire to discuss the motion?

Professor HINCKLEY. I mentioned economics because it must be apparent that the future spending of our dollars abroad and our thoughts following them will bring the interest of students and colleges of commerce to our foreign service, for such services will be required by these great institutions, the shipping institutions, marine institutions, banks and such; in fact, we feel at Berkeley a pressure on the part of students of commerce to get some of the elements of international law as a basis for the understanding of the administration of this great service. So, with us, the economic element is essential.

Professor HARLEY. We have so many young men interested in international exchange and foreign commerce in general and, furthermore, this is merely a recommendation anyway and it has a tendency to make international law more practicable by tying it up with actual trade and commercial questions, and I think the business of the inter-

national lawyer is more and more going to that point. I believe it may be well recognized in this resolution.

A MEMBER. I move that we add the word "economics" to "history."

Professor HUDSON. The amendment would strengthen the resolution, and I should be for weakening it. I should like to draw a parallel between the situation with respect to advanced degrees in political science and the history of courses in business law in business schools. The Graduate School of Business Administration at Harvard threw away its course on business law two years ago, in spite of the fact that two men connected with the school had prepared a leading casebook on business law. The Business School did that on the theory that they were not really going to equip their men in business law, and that business law was something that they had to have only incidentally. The word "indispensable" in the resolution seems to me too strong with reference to political science, and if the resolution could be tempered in that sense, I should find it less objectionable.

Professor STOWELL. I should like to support what Mr. Hudson has said. It seems to me that most of our international questions turn largely on psychology, and if you are going to include economics I should like to see a reference to psychology.

Professor BLAKESLEE. I might say in explanation of the discussion in the committee that when it was suggested that it would be desirable to have international law in connection with studies for advanced degrees in the department of economics, it was admitted that that would be very desirable and practically indispensable for those who are specializing in foreign trade and commerce, but that many in the department do not specialize in that part of economics but rather specialize in other branches, particularly upon economic theory, and so forth. Although the committee, I think, has no strong feelings one way or the other, it was thought well to leave that out.

Professor HART. It would seem to me that that is not a suitable resolution to come from this body. If they are in favor of that subject from their point of view, it is for them to recommend. I cannot believe that our recommendation will have very much weight in the minds of a sister department.

The CHAIRMAN. There is, I believe, an amendment before the house, and that amendment is to include heads of departments of economics in the category with departments of political science and history. Has that motion been seconded?

(The motion was seconded and a vote taken.)

The CHAIRMAN. The Chair believes that the amendment is lost, and the question recurs on the original motion.

(The original motion was carried.)

The CHAIRMAN. Now, we are through with Committee No. 2, Committee No. 3 is next.

Professor GUSTAVUS H. ROBINSON. Mr. Chairman and members of the Conference, the gist of this resolution is that the professional lawyer is apt nowadays more than in any other time to run into questions which we label international law questions; secondly, that the lawyer in this country traditionally is more likely to be an official of the government than other men and we hope that he may not make himself or his country ridiculous on some question of international law. Of course, the Bar Association has also recommended the subject. So the resolutions of this committee are, first, that international law be required of students seeking graduate degrees in law; secondly, that courses on international law be offered to and be recommended to all law students; and, thirdly, that the courses be expository and professional in character.

This resolution indicates that I have undertaken to reread my mandate to include more than graduate law. I got hold of a stack of law school catalogs, 110 of them, and I went through these to find out what institutions give a graduate course in international law, and I undertook to understand "graduate" to mean that the institution gave a degree in law beyond the first degree in law—an LL.M. or something of that sort. I found that there were twenty-one institutions which do give a graduate degree, and that nineteen of them offered international law. The University of Indiana did not. A rather astonishing omission from the list was the University of Pennsylvania, which gave an LL.M. but did not offer any international law. It thus appears that the law student seeking a graduate degree has our subject on his bill of fare. The question rose in my mind as to the nourishment of the undergraduate.

Since I had the material before me I therefore shifted my inquiry over to see what institutions gave the undergraduate law student international law, and I found that sixty-five did not and forty-five did. Then I took the list of the Association of American Law Schools, in which there are sixty-one members, and I found that thirty-one did and thirty did not. There were nineteen States in which there were either one or two law schools where a youngster could get his education in law without international law being offered to him at all. There

were five law schools in the State of Pennsylvania and none offered international law. Ohio is blessed with eight, and none is offering international law. It seemed to me, therefore, that it would be worth while to include the question of undergraduate instruction, and I did so.

You notice that the recommendation is that as to graduate instruction the course in international law be required. I realize that that is debatable.

Professor HULL. How many require it now?

Professor ROBINSON. I cannot tell. The catalogs do not indicate in a great many instances whether it is a required thing or whether it is an offered thing; and, furthermore, they do not indicate how much is given. Northwestern has four different courses in international law in the law school, and Harvard has two.

Professor HUDSON. How many does Northwestern give?

Professor ROBINSON. They are of different content, and so on. Some alternate, but apparently three are given yearly.

It seems to me, as a graduate proposition, that the only debate is whether or not we would recommend that the course be required.

Professor HUDSON. Is there any law school in the country that requires international law for its degree in law?

Professor ROBINSON. I do not think so, so far as I can tell from the catalogs. I think the answer is no, but I put in this word "required" for this reason, that the graduate course in law is a variable. In some places it concerns itself with legal philosophy and the getting at the background underlying the analytical law which is taught in the undergraduate law courses; and in others it is a yielding to the urge for a four-year professional course and used as the opportunity to make up professional subjects which were omitted in the three-year course. As to those last named, I feel that I should like to see international law required; as to the others, they are the best law schools, and I do not think we ought to say anything to them. This feeling leaves me on the fence as to our recommendations concerning graduate matters.

Professor POTTER. Committee No. 2 had this matter under consideration in connection with the requirement of international law for graduate degrees in general, and we were proceeding on the basis of the assumption that in graduate study generally specific studies were not required. I rise to ask whether it is known whether constitutional law or any other specific subject is required for graduate degrees in law?

Professor ROBINSON. There are some specific degrees that require

certain subjects. The Harvard Law School does require certain subjects for the degrees LL.M. and S.J.D.

Professor HUDSON. Only for S.J.D.

Professor ROBINSON. I am unable to ascertain from the catalogs of Columbia or Chicago just what is required. The student presents himself and they tell him what to do, or he tells them what he wants perhaps.

Professor HUDSON. The resolution is in three parts, and I would like to suggest that we act seriatim on those. In view of the fact that no law school in the country requires international law for its advanced degree, I move that we pass to the second part of the resolution.

Professor ROBINSON (reading):

> That courses in international law be offered to and recommended to all law students and that the course be expository and professional in character and be given by a member of the law school faculty.

I realize that our Thursday morning discussion showed that there was very considerable difference in viewpoint between the law school attitude on this subject and the attitude of most of you who are not in the law schools, but it can be made sufficiently professional if it be given by a member of the law faculty—which, by the way, is not the usual thing. In a great many instances the man who gives international law in the law school is borrowed from the political science faculty. He may have an LL.B. attached to his name and yet be borrowed from a political science faculty. Now I contend that there is a distinct group of international law subjects in the law schools. There is the course in what we call the conflict of laws, and there is admiralty. The law merchant is international in its tone. It seems to me that the law schools might work around to putting that whole group into the hands of a single professor, and include in it the international law we are talking about, which is, I assume, public international law.

Professor HERSHEY. It would be impracticable for most law schools to make international law a part of the required curriculum. I do not believe that many of them could do that. We used to require international law in our Law School at Indiana University, but it has been abandoned owing to the pressure of other subjects. I think this tendency away from international law in our law schools is pretty general.

I do not believe it is practicable, either, to require it as a part of

graduate work or to require that it be given by a special professor. The only possibility with us, for example, would be that such a course be given by the head of the department of political science.

Professor DUNCAN. Did I understand from some of the discussion that was made here that the Bar Association had acted and had resolved that the course of international law should be given in the law schools?

The CHAIRMAN. The Bar Association in 1916 adopted a resolution urging the State bar examiners to require a knowledge of international law as a condition of admission to the bar.

Professor DUNCAN. It would seem to me that that would pretty nearly cover the case we are discussing here. Recalling what Mr. Hart mentioned a moment ago, it seems to me we are going out of our province when we are advising law schools what ought to be done.

Professor POTTER. I should like to speak to the point of requiring or requesting that the subject be given in the law schools by a member of the law school faculty. I cannot help speaking on this from a personal point of view, because I happen to be a "borrowed professor." It seems to me to be unfortunate to pass this resolution as phrased, for two or three distinct reasons. In the first place, it may lead deans of law schools to evade any action on the resolution at all by saying that they have not any one who can give the subject. In the second place, while I speak with deference in the presence of members of law school faculties, still I am not sure that international law is always taught best by members of law school faculties, particularly when they are asked to give it while their main interests lie elsewhere. And, in the third place, it does not seem to me that the objections to allowing the professor of political science to give the subject in the law schools are sufficiently serious so that we should exclude that possibility where it is the only way of obtaining the instruction in the subject in a law school.

Professor HUDSON. I should like to suggest to the chairman of the committee that the second part of his proposal be strengthened and amplified and that there be included in the proposal as adopted here and embodied in our final act some reference to the existing deplorable state of instruction in international law in the law schools.

The CHAIRMAN. You have heard Mr. Hudson's suggestion. Now, what would be the substance of that resolution modified in accordance with Mr. Hudson's suggestion?

Professor ROBINSON. Of course, I do not undertake offhand to put it in a final form, but I understand that the motion is that we recite something from the figures that I have given here. Since I did not

have access to the very latest catalogs in all cases, I should not want to stand for those figures right now. I discovered in my look at the University of Kansas catalog that it did not have international law. That was the 1922 cataloge. Since that time there has been a new dean there, and they have international law. I think that the amendment will add to the resolution, however.

The CHAIRMAN. Will you give us the substance?

Professor ROBINSON. The substance of it was that out of 110 catalogs that I examined—of different dates but within the last three years—there were sixty-five that did not give international law.

Professor HUDSON. I suggest that you drop all but sixty-one of them, and refer to the situation in sixty-one law schools.

Professor ROBINSON. There it was just about fifty-fifty. In the sixty-one which belonged to the Association of Law Schools, thirty-one did and thirty did not. On the other hand, the schools that are not in the sixty-one are apt to supply many men in public life. I do not know that I should be altogether agreeable to making the change.

Consider the Tennessee schools. We know that they staff the political bodies to a large degree. There is Cumberland University, for example. It has been going on for years and years and it does not give international law even now. We have lots of politicians from Tennessee and we have lots of politicians from Ohio and the law schools there do not seem to have international law.

Professor QUINCY WRIGHT. I am strongly impressed by the large number of resolutions we have and by the great similarity of the subjects under discussion in committees 3, 4 and 5. It seems to me that one resolution citing the report made in 1916 by the American Bar Association and incorporating the substance of this matter and the report with regard to the State bar examiners could be made into one fairly brief resolution with regard to our attitude toward law instruction.

I should suggest that the chairmen of these three committees attempt to so incorporate those into one resolution and that we pass on to the others.

Professor ROBINSON. I can appreciate the purpose and desire to save time, but I want to make the remark that these are resolutions directed at different targets. What we want to do is to put this one into the form of a letter to the law school deans and what Mr. Middlebush wants to do is to put his in the form of a letter to the bar associations. That is the argument, it seems to me, against the adoption of Mr. Wright's resolution.

Professor COLEGROVE. May I be allowed to suggest this possible phraseology:

> *Resolved;* That this Conference urges that courses of international law be offered in all law schools, and that this instruction be professional in character.

The CHAIRMAN. Is that to take the place of three or four of these resolutions?

Professor COLEGROVE. No, but Nos. 1, 2 and 3, as proposed by Professor Robinson.

Professor HUDSON. I second that motion of Mr. Colegrove's.

Professor QUINCY WRIGHT. It seems to me that the adoption of this proposal by the American Bar Association is the most important endorsement there is. I should say that it is important to cite that in the report of Committee No. 4.

Professor ROBINSON. It is merely cited in this report, and it is made the chief subject of that of Mr. Middlebush's committee. It is put in here as argument.

Professor HART. I submit that a resolution of 1916 by the Bar Association and which that association has never carried out would hardly have much appeal now.

Professor ROBINSON. I left 1916 out of it for this very purpose. I said, "standing resolution."

The CHAIRMAN. I believe there is a substitute before the house.

Professor Colegrove has offered the substitute motion. Does the Conference understand the tenor of his proposed substitute?

Professor HARLEY. Just one word. I think that this substitute that Mr. Colegrove suggests really consolidates the two elements in the Conference here, namely, those who are insisting upon the purely professional instruction by those who are the major teachers in the law schools, that is to say, those who are more than half-time men in the law schools and, on the other hand, it seems to me that it permits teachers of international science who also have a major interest in international law—it permits their services to be taken over by the law school for the purpose of giving instruction in international law. That happens to be the situation in our own law school, and I feel that that would be the happy solution.

Professor HINCKLEY. Those of us who are in the law schools will recall the action taken by the American Association of Law Schools at its winter meeting in response to Mr. Wickersham's address and re-

quest that the subject be given a more professional and larger place in the curriculum, and it seems that so much is on the way through the American Bar Association and the Association of Law Schools that a very brief statement such as Mr. Colegrove suggests would be more in line with our limitations and our effectiveness.

The CHAIRMAN. The question is now on the substitute motion offered by Mr. Colegrove.

(The substitute motion was carried.)

Professor HUDSON. I should like to have it entered in the minutes that that includes Mr. Robinson's statistical paragraph.

Professor ROBINSON. I should like to state for my own information what seems to have been the final disposition of this, if I may. I understand that the preliminary argument remains. I understand that No. 1 recognizing international law as a requirement for graduate courses in law goes out, and I understand that Nos. 2 and 3 stand more or less as they were with the elimination of the language with respect to a member of the law faculty—which goes out—and that Mr. Hudson's amendment as to the statistical argument goes in toward the end of the resolution. If I am correct, I will draw the thing in that fashion and give it to the stenographer.

Professor HINCKLEY. It must impress some of us that there is very generous reliance upon figures and descriptions of courses. If that is put forward too prominently, we shall be lending our authority to what may not stand established as thoroughly as Professor Robinson wished.

Mr. ROBINSON. Yes, my figures are too optimistic, for the catalogs are not any too explicit and some that are explicit specify mere sketch courses.

The CHAIRMAN. Then the report of No. 3 is disposed of. Now we will have Committee No. 4.

Professor MIDDLEBUSH. I think we can save a little time by not reading this resolution again. It is simply to urge that the bar associations of the various States should include international law in the bar examination, and we discard completely the resolution of the 1914 Conference because of the action taken in 1916, and simply assimilate our position to the position taken by the Bar Association in 1916.

Professor HUDSON. I am opposed to any reference to the 1916 resolution. I do not believe for one minute that it represents any considerable sentiment in the Bar Association. I have tried to follow the Bar Associations' affairs rather carefully. I think it would be stultifying ourselves for us to go on record as a professional con-

ference with a resolution that does not accord at all with the state of things in this country. If I were a member of the board of bar examiners of any State, I would not pay any attention to such a resolution passed by this Conference for the simple reason that very few of the law schools—Mr. Robinson says thirty-one out of sixty-one in the American Law School Association—offer courses. Well, several of us here have tried to get together a number of people in the law schools teaching international law, and it is a very difficult thing indeed to find them, and I believe that thirty-one is the very maximum number.

Therefore, at the present time, it seems to me that it would be wholly impossible for the bar examiners to require international law for admission to the bar, and I think that it is useless for us to detract from the character of the resolutions we are debating by adopting a resolution of this sort.

Professor DICKINSON. There is a situation here, which may not be familiar to all of you, which makes the adoption of such a resolution open to some objections. There are a number of States still in which the bar examination is constituted essentially as a test of information, an informational test on a great many subjects. Now, in a State where that is still the practice, it is arguable at least that international law might as well be included as a good many other things. On the other hand, in a number of States the situation is quite otherwise. In Michigan, for example, there has been pretty close cooperation between the law faculty of the University and the bar examiners, and we have been urging within recent years a reduction in the number of subjects and a much more searching test on the subjects on which candidates are examined; and, at the present time, a candidate for the bar in Michigan is examined on only sixteen subjects. For example, he is not examined on the conflict of laws, or on the law of trusts, but he is given a very searching examination on the subjects included in the list. I am quite sure, therefore, that a resolution such as has been reported would be entirely disregarded in Michigan.

Professor MIDDLEBUSH. When I first received Mr. Dickinson's note with reference to my working on this committee, I thought it feasible to adopt a provision such as was adopted by the Assembly of the League of Nations when voting on the provision with reference to the World Court, to calculate the limits of the peace, and in view of that injunction I felt it very wise simply to cut out all reference to Resolution No. 10 and ask that this committee be disbanded.

I wrote to something like twenty deans of law schools and I think with two exceptions they were all opposed to it. There are two States, Louisiana and Kansas—and keep Kansas in mind with reference to what Mr. Robinson has said—that include international law in the bar examination requirements. Porto Rico and the Philippines also have included it, and I felt when I read that resolution of the Bar Association in 1916 that the lawyers of this country meant what they said. Now, if Mr. Hudson's statement is correct, and if the legal profession is not behind the action they have taken in 1916, I would think it would be absolutely useless for us to pass this motion. I am not certain, however, that we ought to take the opinion of any one particular lawyer as evidence of the fact that the American Bar Association no longer stands for the resolution of 1916, and, if they still hold to that, I think that the least that this Conference can do is to stand by what the lawyers have done. If we get before the American people with the statement that the Bar Association stands for this thing but we are opposed to it, we are in a ridiculous position.

Professor HUDSON. We should say nothing.

Professor STOWELL. It seems to me that at that time, in 1916, Mr. Root was quite active as a leader of the bar and as a representative lawyer. It seems to me that Mr. Hughes is in the same position today. Mr. Wickersham, another great lawyer, was, I believe, in favor of this resolution. I am a member of the bar myself, though I do not practice very much, and it seems to me that we would do well to keep this resolution.

Professor CHUBB. I would like to state, speaking for Kansas, that the resolution of the Bar Association has resulted in its being put in in Kansas.

Professor HARLEY. It seems to me that the very least that this Conference of Teachers of International Law could do would be to go on record recommending the requirement of a knowledge of international law on the part of practicing attorneys in this country. If you do not take such action, or do not initiate the movement to promote international law in this country, who will do it? It seems to me that we are entirely too much afraid of treading on somebody's toes. We are the ones that are looked to for the promotion of our science.

I think this resolution should be adopted.

Professor MARTIN. I would like to hear from some of the other members of the faculties of law schools. Members of the faculty of Stanford University are here.

Professor BINGHAM. My views have been so well expressed by Mr. Hudson that I do not feel like using your time in saying anything more. I think he is clearly right.

Professor ALLIN. The examinations in our particular State for admission to the bar are based fundamentally on the class or character of cases that come up to the courts for determination, and so far as the efforts of our law schools are concerned they are at the present time directed not to amplification of the number of subject-matters upon which the student should be examined but, on the contrary, to concentration upon the more important branches of private law upon which he expects to be a master of the subject. There is still another reason to which I might allude without intending any disrespect at all to the bar examiners, namely, the fact that the board of examiners in the majority of our States have never had any such thing as a course in international law, and how can you call upon the board of bar examiners to give an examination upon a subject as to which they have only general information?

Professor ROBINSON. As a practical proposition, I defer to these gentlemen. Mr. Hudson knows the situation, for he goes over the country a great deal, but I am greatly impressed by what Mr. Harley said. If somebody here does not peddle the idea, it will not get peddled and these bar examiners never will get educated. Even if you just shoot an arrow into the air and make a gesture, I think it is worth doing. One of the jobs in the law schools is to educate the bar examiners.

Professor DEBEL. I will say that at first I was opposed to the resolution as proposed but after I got to realize that this association had recommended it in the first place and that in deference to our wishes the American Bar Association had recommended it, it seems to me that we ought not now to go back on the action taken in 1914. If we are going to back water, let the American Bar Association take the initiative in this matter.

The CHAIRMAN. The Chair has no right to express an opinion on this question and he has no intention of taking sides. He would like, however, to say this, possibly for the information of some of our members, that in all the Latin-American States a knowledge of both public and private international law is required as a condition of admission to the practice of law. It is true in France and it is true, I think, in most of the other continental countries of Europe.

Now, that may or may not be a matter which should influence us, but

it is evidence of the practice in other countries. It is at least a matter of information whether it is of any value or not.

Professor HUDSON. I am not very much impressed by what has been said. It seems to me thoroughly proper to urge the introduction of courses in international law in the law schools, and I have already spoken in favor of making Mr. Robinson's recommendation to that effect very much stronger. I am very much in favor of having every law school in the country teach international law and putting it on an equal basis with the law of corporations, the law of contracts, the law of property, and so forth; but I should like to see this Conference restrict itself to what seems to me to be its purpose.

We are not here for the purpose of propagandizing with reference even to the teaching of international law—at least I am not here for that purpose. I thought we were here for the purpose of exchanging our ideas as to the subject of international law and as to our efforts in its development.

Now, it does not seem to me that the fact that the Conference of 1914 took this action is a matter of very much consequence. Nothing happened as a consequence of that recommendation of the Conference of 1914. Moreover, it does not seem to me that the resolution of the Bar Association has had any effect, although I am delighted to hear that in Kansas it did have some effect. I do not believe that the resolution of 1916 expressed any general conviction on the part of the lawyers in this country. If it expressed it at that time, I think it does not express it today, and I should like very much to see us take account of the situation that has just been described by Messrs Dickinson and Allin with respect to the bar examinations and not go on record with something which in my judgment the bar examiners of the country would deem ridiculous.

Professor POTTER. I wonder if it would reconcile the conflicting views in this matter if we inserted in the resolution the phrase "as soon as possible." I realize that that might weaken the resolution to the extent of making it ridiculous, but it might take account of the fact that things are changing in this field, and what we are looking for is the development of results by several processes referred to by Mr. Hudson in his previous remarks.

Professor HUDSON. We make our appeal—Mr. Robinson's resolution was precisely what we want. Let us stick to it as a realizable, practical thing, and also deemed so by the people in the law schools and the bar examiners. If, in the course of the future, the law schools will

follow that resolution, it would then be a proper thing to support this other resolution as to bar examinations.

Professor ROBINSON. The law schools pay a lot of attention to anything that the bar examiners ask. We put on what the bar examiners ask. I read Lawson's remarks in 1914 about that very thing. He said that if the bar examiners required it, he had a big class, and if the bar examiners did not require it the class went down to five.

A MEMBER. I want to ask about the student who studies in an office or who studies law on the side and is admitted to the bar without attending a law school. Is it not desirable that he should have some means of studying international law?

Professor MIDDLEBUSH. Mr. Hudson refused to come into this committee, of which he was a member. I talked to Mr. Borchard about it and, as he is not here, I will state Mr. Borchard's opinion upon it. He said, I believe, that it is the right thing, because unless you do something like this through this particular method you are never going to get anywhere in getting international law into the larger number of law schools.

Professor HUDSON. It would appear ridiculous to the bar examiners of the country.

The CHAIRMAN. The Chair desires to call the attention of the members to the intent of this resolution, which is not to urge the bar examiners to do anything, but to consider the advisability of calling the attention of the State bar associations to this.

Professor FENWICK. It seems unfortunate to have another division of opinion on a question of this kind. After all, we only want to make recommendations upon matters upon which we have general unanimity of feeling. My own tendency would rather be not to adopt a resolution unless we are ready to agree almost unanimously upon it. I would like to suggest as a possible way out that we tone down the recommendation a bit and it might go through. Perhaps we could conciliate both sides by suggesting that we call the attention of the bar examiners to the desirability of having such courses included in the bar examinations, and we could urge them to do so when conditions in the law schools admit of such requirement. That might create the back-fires that Mr. Robinson has in mind and lead them to get in touch with the law schools.

Professor HARLEY. I second Mr. Fenwick's modification there. I think that is highly desirable. I believe that is what Mr. Potter had in mind by "as soon as possible," and it seems to me that the bar

examiners would not give such an examination unless they felt there would be some instruction of the candidates beforehand.

Professor MARTIN. I think that this thing ought to stand or fall as the chairman of the committee has reported it. I do not see any objection to a division. I think it ought to come to an issue; therefore, I move the previous question.

(The motion was seconded.)

The CHAIRMAN. There is a request for unanimous consent to hear Mr. Bingham.

Professor BINGHAM. Mr. Chairman, I think that we ought not to do that which will tend to make it more difficult for the law faculties and this organization to cooperate. It seems to me that the division on this resolution will have that tendency. I doubt very much if you could induce the majority of the faculties in our leading law schools to include international law as a required subject, and I doubt very much if the bar examiners would adopt it as a required subject for the bar examination. It seems to me that that is the point we ought to consider before we vote on this resolution.

The CHAIRMAN. Then the question is on the resolution as originally offered.

Professor STANWOOD. I think Mr. Fenwick offered that as an amendment. If so, the vote is on the previous motion first.

The CHAIRMAN. The motion of Mr. Fenwick is to attenuate the effect of this resolution by adding the words "as soon as possible" in view of the existing conditions, or something like that Does every one understand the tenor of Mr. Fenwick's motion? Are you in favor of the motion?

(After the vote.) The motion is lost, and the question recurs on the original motion.

Is there any further discussion?

(The original motion was lost.)

The CHAIRMAN. We are now ready for the report of Committee No. 5.

Professor DICKINSON. Is it necessary to have that read again? It simply records our satisfaction with the action taken by the American Bar Association in accordance with our previous recommendation.

(It was moved and seconded that the resolution be adopted.)

The CHAIRMAN. Is there any discussion?

(No response.)

(The resolution was adopted.)

The CHAIRMAN. We will now hear the explanation, if any, of the report of Committee No. 6.

Professor ANDREWS. Mr. Chairman and members of the organization, I wish to supplement my previously made introductory remarks by requesting that the three members of the committee who did do some research work in preparation for this report, Messrs. Tryon, Fenwick and Callahan, turn over to Mr. Dickinson the results of their investigations. I know that something was done and that their contributions to this report were in accordance with those researches. These resolutions constitute really only one, but that one in four parts.

The first part reads:

> *Resolved*, That upon the initiative of institutions where the instruction in international law is lacking, steps should be taken for providing such instruction by visiting professors or lecturers in the regular semesters as well as in summer sessions, to be given preferably as part of regular courses or as full semester courses rather than in isolated lectures and with assigned collateral reading sufficient to justify college credit. This instruction should be upon substantive principles, but may be approached through the presentation of popular questions of general interest, and should be given in a scientific spirit and not in the interests of any propaganda.

The CHAIRMAN. Do you want to vote on these different parts of the resolution separately?

Professor HUDSON. I think those are quite separate as I heard them read the first time.

The CHAIRMAN. You have heard the first part of this resolution.

(It was moved and seconded that the part above read be adopted.)

Professor HUDSON. Could we have it read again?

(The resolution above referred to was again read.)

Professor ANDREWS. May I say in further explanation of that first point, that it is modeled upon the resolution of 1914, with certain modifications we thought advisable to present. In particular, we have emphasized the necessity of the work being in connection with regular courses—"preferably," we have said. In the second place, we have not slammed the door upon the presentation of popular questions of general interest, but we have expressed it in this way—"but may be approached through the presentation of popular questions of general interest," though the emphasis is upon substantive principles.

Professor HUDSON. I think that resolution would make this Con-

ference look ridiculous. If I know anything about the situation in colleges and universities in this country, that is not the way things are done in any of them. I believe it cannot be done successfully in any degree. If I were a member of the board of trustees of any foundation, I should not support it. If there is a sufficient interest on the part of the college itself, it will present this instruction. I am sure that most of the universities and colleges of the country would pay no attention to it.

When it comes to the form of the recommendation, I react against the expression about propaganda at the end of the statement, as if we were possibly dealing with anything that were to be labeled with that miserable term as it is thrown around these days. If the resolution were passed, I should certainly hope that this reference would be taken out. On the substance of the resolution as a whole I hope this Conference will do nothing.

Professor HULL. Mr. Hudson has stated my reasons for desiring to hear the rest of the resolution, for I hoped that in the rest of the resolution we might find some information as to how this plan is to be carried out successfully. As it stands, it seems to me to be a lowering of our standing, that it will result not merely in a piecemeal and unsatisfactory series of lectures in the colleges or universities visited, but that it will also inevitably weaken the work of the colleges from which the lecturers go. I am unable, presently at least, to see how such a recommendation could be carried out which would result to the advantage of both the visited colleges and the colleges from which the professor has gone.

The CHAIRMAN. Do you desire to have the rest of the resolution read?

Professor HULL. If there is more light in the resolution on that point, I should like to.

Professor ANDREWS. I would like to say here that perhaps the committee was in fault in following what had been adopted by the Conference of 1914. Although there was some objection at that time to one of these phrases, the Conference unanimously adopted that particular phrase in regard to propaganda. The spirit in which that phrase was then put in, was understood now and the committee as a whole felt that it could do little better than to follow the procedure which had received the approval of this Conference at another time.

The second point or resolution is:

That a committee be appointed by this Conference to ascertain the institutions in need of additional instruction in international law, and to endeavor to find means of affording such assistance as may be necessary to the instructing staff of the said institutions or of supplying this additional instruction by lecturers, chosen by this committee and approved by the executive committee of this Conference.

The third is:

That this special committee [to be distinguished from the executive committee] bring to the attention of every college, university and other school not offering at present instruction in international law the importance of this subject and the readiness of this Conference to cooperate in introducing or stimulating such instruction.

And the fourth is:

That this Conference take steps to secure adequate funds for the payment of stipends and traveling expenses to the visiting professors.

I may add here that some support was given to the idea that those funds would be forthcoming, and that the machinery of the Institute of International Education, of the Carnegie Endowment and of other similar foundations was in the mind of this committee when this resolution was drawn up.

Professor GUSTAVUS H. ROBINSON. In the discussion this morning with reference to these various resolutions, I was earnestly opposed to anything which looked like an attempt on the part of the members of this Conference to put themselves forward as possible recipients, and it seems to me that what Mr. Hudson has said is apropos. It is a provision advocating first the teaching of this subject and then we go ahead and make all the plans as to the conditions under which they may put international law on.

I propose an amendment simply that we put ourselves on record as requesting that institutions which do not now give instruction in international law give such instruction.

Professor CHRISTOL. I am very strongly in support of this resolution. I come from the University of South Dakota. I know that in South Dakota there are ten institutions that would welcome such an arrangement, and some of those institutions are so near that they can be reached. We have in western States extension courses and correspond-

ence courses and, of course, you all realize that these courses are not as satisfactory as regular courses, but that is the best way and the only way that we can reach a great many people.

Now, with regard to courses being given in the law schools, I am strongly in favor of that, but in western institutions in the past, international law has not been given and a good many of the young lawyers have time at their disposal. They are not very busy the first few years and if they could I think they would be glad to take courses, extension courses or correspondence courses, and in that way we could instruct the lawyers of the country.

Now, I am thinking of a discussion that we had last Thursday, of the disagreements among us as to whether the teacher of international law should limit discussion strictly to the law as it is pretty generally recognized or should go beyond that and consider the question as to what the law ought to be. Personally I am in favor of both provided he will make it perfectly clear that international law is still in the making and show what the law now is, what it was in the past, and what it ought to be in the future. I believe our disagreements are not very great. but such as there are will come especially from the lawyers who have not had any courses in international law. We have to appeal to them in the kindest spirit. They are apt to be very conservative and limit international law to a narrow field. Some of them hold that there is no such thing as international law. They are apt to be in favor of what is, not of what ought to be, and it seems to me that with this resolution we could do something, especially if the money were available for giving courses. A professor could go to an institution on a Friday of a week and give a couple of hours Friday afternoon or Friday evening for a semester, and a good many lawyers living in the neighborhood of the institution could be reached, in addition to the regular student body, and I think that we ought to try to give extension courses.

The CHAIRMAN. Now, there is an amendment before the house. May I ask the members of the Conference to speak of the amendment.

Professor HUDSON. I wish that we as teachers of international law could get rid of the desire to vulgarize our subject. I wish we could get rid of the notion that Tom, Dick and Harry ought to be taught international law. I think it is very necessary for Tom, Dick and Harry to have some ideas about international relations, and I think some useful courses on international relations might be given through such means, but I very much wish that we could realize that the subject with which we are dealing is not a subject that these young lawyers that have just

been spoken of are by any means equipped to deal with and, for my part, I hope very much we will do everything we can to discourage their dealing with it. I think they may do more harm than good. If a knowledge of a little law is a dangerous thing, a knowledge of a little international law is much more dangerous.

Professor ANDREWS. Just speaking as a representative of the committee, it is my duty to say first that the committee felt very strongly that something of this kind should be done; secondly, that the committee was strongly urged to revive what seems to some more elaborate machinery, because, unless the committee suggested some feasible way of carrying out the proposition—if the committee simply gave the Conference a biased suggestion—then it would not carry weight. It is very probable that it has gone too far in that direction, but that was the thought in the minds of the committee in making the four resolutions.

Professor STOWELL. The point raised by Mr. Hudson is one of the most fundamental that has come before the Conference; but, I think he is wrong in his point of view about the study of international law at the present time. We need a very wide base to get an accurate scientific knowledge of international law, and the base of instruction should be the widest possible at the present time. As soon as people in this country learn to defer to those who know something about international law, we can then restrict the number of those who are admitted to this study as one of the higher branches. At the present time it is necessary to extend the scope of the instruction in every possible way.

Professor COLEGROVE. I rose a moment ago to ask if Mr. Robinson would again read his substitute.

Professor ROBINSON. "That we request the institutions which do not give instruction in international law to give such instruction." Personally, I do not see the relevancy of the debate on the amendment. We want instruction. We do not say who should give it and we are not indicating how it is to be financed. We might simply add that this association stands ready to cooperate with the institutions, or some such "oily" word as that.

Professor POTTER. It seems to me that the substitute radically alters the nature of the proposal because as phrased it will be read to refer exclusively to instruction by regular members of the staff, and that if we are to include in the resolution any idea at all of instruction by visiting professors, we should add a few words to that effect.

I was not aware that the institution of the visiting professor was such a rarity, nor that it was on such a low plane. It seems to me that much

may be done in this direction. Visiting professors may be chosen from exactly those persons who, when they are home and not on a visit, are the ones who are giving the regular courses

I should suggest—I do not know what the procedure is here—an amendment of the substitute to include the words "either by members of the regular staff or by visiting instructors."

Professor MARTIN. There is one practice which I hope Mr. Hudson does not want to curtail. I refer to the practice of Harvard University of sending some of its experts over the country. For example, last year Professor Wilson came to Pomona College and he spent one-third of the semester there. He gave one lecture every day for the one-third of the semester, and they gave one unit on the basis of a three-unit course. The students said it was the hardest unit they ever earned and the most useful.

I do not think there was any diminution there in standard; I think the students of Pomona College were far better versed in international law than they were before he came. I think that is a sound practice, coming from Mr. Hudson's own university, which ought to be encouraged.

Professor ROBINSON. I accept Mr. Potter's amendment.

The CHAIRMAN. We have then a proposed amendment to the substitute. Will you kindly state that amendment?

Professor POTTER. "Either by members of the permanent staff or by visiting instructors." I do not know whether that would meet the needs of the grammar of the resolution as it has preceded that point.

Professor STANWOOD. Does he mean any member of the visiting staff—a teacher of economics?

Professor POTTER. A proper member.

Professor QUINCY WRIGHT. I want to make the same kind of suggestion I made before. I think the numerosity of the resolutions weakens the strength of all. I have been trying to think that if we proposed no specific machinery for carrying this out, that the substance of it would be included in the resolution we have already passed, the eighth resolution of the first committee, in which we expressly state that we recognize the need of undergraduate instruction in international law. If that were sent around to the colleges, I should think that would cover it.

Professor HULL. That is the reason for my opposition. It seems to me we have put up the flag there and now we are pulling it down.

It does seem to me that we are not taking the subject of international law seriously enough. If we will only consider the very small number of men in this country who are engaged in teaching international law, and then consider this proposition to spread them out all over the country and make their days thinner and thinner where they try to teach it, I am sure we will realize the undesirability of this procedure. The time may come, of course, when international law departments in all colleges and universities will be equipped as amply and as richly as are the departments of American history, for example, and when it will be quite possible for this exchange of visiting professors to be made, but until that time comes it does seem to me that it is intensive cultivation of our field which will produce the best results.

We are, of course, all exceedingly eager to spread as rapidly as possible an interest in and a knowledge of international law and international relations. But I submit that the most effective way to do that is to give to the students we at the present time have in our classes as thorough and adequate training in the subjects as is possible.

Professor ANDREWS. Just a word, referring to the committee again: The committee would probably oppose the substitute, I think, because it would not provide what was brought up in the committee most emphatically, the machinery for financing this project. I also point out that the committee felt that it would be possible to secure the services of great men in such a way as was suggested by Mr. Martin, on sabbatical or semi-sabbatical leave, and I would like to call your attention to the fact that it was intended to have full courses.

Professor COLEGROVE. We have covered a large number of subjects this afternoon, and perhaps we will cover so many that it will not be necessary to meet again. Many of our differences might be put on the agenda of future meetings of this organization. This committee has made a considerable study of the question of exchange professors and what methods could be worked out with regard to them. Of course, there is an Institute of International Education which provides for exchange of foreign professors in American universities. Perhaps it would be better to study that institution a little more and, in order to dispose of the subject in such a way as not to take it off the agenda of some other meeting of this organization, I move that the question be laid on the table.

(The motion was seconded.)

The CHAIRMAN. It is moved and seconded that the question be laid on the table.

(The motion was carried.)

Professor HUDSON. Does that conclude the reports of the committees?

The CHAIRMAN. There is one more report, I think.

May I call your attention to the fact that it is now fifteen minutes of five? There is one more report and some special resolutions that are to be offered.

Professor Stuart.

Professor STUART. As you know, this regards the extension of the teaching of international law and related subjects in summer sessions. I do not know whether it would come under the same prohibition we have just had or not. At any rate, I decided that before we could get any intelligent survey of the situation I would have to send out for information from the summer schools, and I did that, finding that there were some eighty-five schools that gave summer school courses, and that as to about seventy-five of them it seemed advisable to send for information; and we received information from approximately fifty in the short time that was given and found that only about one-third were giving such courses, and so the first resolution refers to that, and reads:

> Considering the fact that summer schools now exist in some eighty-five American universities and colleges, and that the student body of such schools is largely composed of teachers in the various school systems, and that at the present time courses in international law are given in less than one-third of these institutions, this Conference hereby recommends that all universities and colleges having summer schools offer elementary courses in international law and related subjects, and advanced courses whenever the conditions warrant it.

Professor HUDSON. I suggest to the Conference that this matter has been fully covered so far as is necessary by a previous resolution adopted, and that there is no reason for singling out the summer sessions which are a part of the universities of the country.

I therefore move that this matter be laid on the table.

(The motion was seconded.)

The CHAIRMAN. The motion is made and seconded that this resolution be laid on the table. Is there any desire to discuss the question?

Professor TRYON. I think we should hear from the chairman of the committee.

Professor STUART. As I said, the committee was unanimously in favor of giving such courses by experienced and qualified men, as the second part of this resolution would indicate, and we ran into the same difficulty as was indicated on the preceding question, as to how are you going to get them, and if you will let me read the second part of this you will see how we handle this.

> The Conference further recommends that the teaching of such courses be carried on as far as possible by those who by training and experience are thoroughly qualified, and as a practical means of obtaining this result exchange of teachers be facilitated as far as possible by this organization.

In other words, we leave it wholly within this organization's hands as to what should be done to accomplish that, and the committee unanimously felt that there was a need, even greater, let us say, in summer sessions than in the regular courses in small universities, because there are many people from small institutions that go to summer sessions to obtain such instruction, and if a sufficient number demand it then the summer session school is compelled to go somewhere to obtain the proper men to give these courses.

Furthermore, and I did not take the time to express this thought before when Mr. Stowell got up and opposed Mr. Hudson, but I am sure the committee backs me in this statement, that we cannot put international law under a glass case and feel that it is something too tender to be approached by the ordinary instructor or by the ordinary student, and if this thing goes through we are going to get the proper kind of instruction.

Professor POTTER. I would like to suggest that there are two points involved here as to which we might perhaps find our way out by treating the second and third resolutions, if I understand them correctly, as we treated the preceding one. Perhaps we will not table the first part of this resolution as we tabled the preceding one, but we might treat that as we did an earlier resolution relating to the extension of international law by inserting a phrase similar to that which was inserted in the earlier resolution.

What Mr. Stuart has said regarding the presence of people in summer sessions who will not get international law during the winter months is absolutely correct. We have people in the summer sessions who can be reached at no other time.

Professor QUINCY WRIGHT. I am inclined to think there is a great

value in teaching international law and related subjects in the summer school. The summer school is the home of the high school teacher. It is important, I think, that the high school teacher should have an opportunity to get some knowledge of this subject; so it seems to me that it is worth while to make a special reference to the summer school as a place where these subjects should be taught.

Professor CHRISTOL. I have taught in summer schools and we are going to teach next summer again, and I know that to the summer schools will go superintendents of city schools, and principals, and possibly also the lawyers that have been referred to in a derogatory way a moment ago. Many of these young practicing lawyers are highly trained men and many of them in the western States may not be especially busy during the summer time and they will take advantage of the summer school.

So I am very much in favor of having this resolution passed because of the character of the summer schools.

Professor HULL. When Mr. Potter arose I was about to offer the substance of his remarks as a substitute for the resolution of the chairman of the committee. In Resolution No. 8 of Committee No. 1 we urged upon universities and colleges of the country an adequate provision for the teaching of international law and related subjects. I share entirely the view that the summer school, when properly conducted and provided for, would provide a splendid opportunity for increasing the teaching of our subject.

The CHAIRMAN. There is an amendment before the house to the effect that this matter be laid on the table.

Professor STUART. Before that is voted on, it seems to me that No. 3 ought to be considered, because this is really one resolution in three parts. The third part is:

> *Resolved*, That the Conference recommends that a copy of these resolutions be sent to the directors of the summer sessions and also be brought to the attention of the directors of extension divisions of all colleges and universities concerned.

Incidentally, in many of these letters which I received are inquiries regarding such courses, how they could give them, and where they could get men. I remember that Marquette University wanted a bibliography from me on the subject.

Professor HARLEY. Mr. Chairman, I would like to say from three years' experience in the summer sessions on the Pacific Coast, that last summer they had 2100 students and, as has been pointed out by

the chairman of the committee, a very large proportion of those students were prospective or present teachers in the high schools and schools of that section of the country.

Not only that, but a large number of the students came from nearby States like Arizona and Texas, and this was practically the only opportunity, in some cases at least but not in all cases—in some cases it was the only opportunity they had of coming into contact with a course in international law.

The practice is quite prevalent on the Pacific Coast also of bringing prominent professors from the East to our summer sessions, which are quite universally popular on the Pacific Coast. I think perhaps the condition on the Pacific Coast differs from the position on the Atlantic Coast, where the extreme summer heat is not so conducive to summer sessions as it is on the Pacific Coast, and I think it is quite worth while to make a distinction between the summer session and the regular session because in many cases the administrative personnel is different, as it is in our institution.

I think it is quite worth while to deal with the matter directly with the directors of the summer sessions.

Professor ROBINSON. I want to approve all that has been said about special treatment of the summer school. While I was at the University of California, I had a course at one time in the summer school. Summer school sessions give a measure of help to the "dubs" in the regular courses and, likewise, to the teachers who come to the university. You run sort of a Chautauqua. I was inclined to oppose this morning in the discussion what seems to me to be the self-seeking character or the self-serving character of part of this resolution.

Now, we just a while ago admitted that we are the only fellows that know international law and, since they will come to us anyhow, why put that in? I object to anything that indicates that we are the people to call on. I do not want to make it publicly known that I want to go.

Professor HUDSON. May I suggest to these gentlemen that the directors of the summer schools generally understand the needs of the summer schools?

Professor ROBINSON. I think it is quite clear.

Professor STANWOOD. Would it be possible to say "either in its regular curriculum or in its summer school?" I move you, sir, that that be incorporated in the form of the resolution.

The CHAIRMAN. Now we have an amendment. Mr. Potter, what was your amendment?

Professor POTTER. If I am not mistaken, what I suggested was to table the second and third resolutions as read and to cast the first in the form of the phrase inserted in Resolution No. 9 of Committee No. 1.

The CHAIRMAN. You offer that as a substitute?

Professor POTTER. In whatever form it is necessary.

The CHAIRMAN. Do you understand the substitute now? Does everybody understand the substitute? Is the Conference prepared to vote on it, or does it desire to discuss the matter further?

(The substitute referred to was carried.)

Professor STUART. I take it that I am to turn this over to Committee No. 1 for redrafting? Is that the understanding?

The CHAIRMAN. I think so.

Professor COLEGROVE. I would like to offer the following resolution:

> *Resolved*, That the Conference expresses its appreciation to the committees which have collected valuable data upon the questions before the Conference, and requests that this information be preserved for the use of the Conference.

The CHAIRMAN. You have heard the motion. Is the motion seconded.

(The motion was seconded.)

Professor MARTIN. Those directions have already been given. Why go through all this?

Professor COLEGROVE. My purpose in offering this resolution was simply to thank the committees which have collected material.

The CHAIRMAN. You have heard the motion. Is there any desire to debate the motion?

(The motion was lost.)

(The following resolution was offered by Professor Herbert F. Wright:)

> *Resolved*, That the Conference wishes to express its appreciation and its satisfaction to the Carnegie Endowment for International Peace for its aid toward the accomplishment of another wish of the Conference of 1914, in making available for students and teachers of international law the opportunity to attend the courses of lectures offered each summer by the Academy of International Law at The Hague.

The CHAIRMAN. I have announcements here on the table of lectures to be given at the Academy during the summer. Anybody who wishes them may have them.

Professor HULL. I second that resolution.

(The resolution was adopted.)

Professor DICKINSON offered the following resolution:

> *Resolved*, That the Conference of Teachers of International Law and Related Subjects desires to record its appreciation of the action of the Carnegie Endowment for International Peace in making the meetings of this Conference possible.
>
> *And be it further resolved*, That this resolution be communicated to Dr. James Brown Scott as Secretary of the Endowment.

(The resolution was adopted unanimously.)

The CHAIRMAN. Are there any further resolutions?

Professor POTTER. It does seem to me that we might consider one single point to which reference was made at the luncheon yesterday. We have been telling everybody within shooting distance what they ought to do, but we have said nothing about what we ought to do ourselves. We have discussed the subject of international law, but we have not said much about the teaching of international law. I should like to move this resolution:

> *Resolved*, That the Conference places itself on record as of opinion that an adequate knowledge of modern history and international social and economic relations is indispensable for the proper training of the teacher of international law.

I move its adoption.

Professor ROBINSON. I dislike to debate that at this late time, but I do not think I could go along with that.

The CHAIRMAN. The motion is now open for discussion.

Professor MARTIN. I do not think we ought to take further time to vote on this. This is already covered by the report drafted by Mr. Hudson.

Professor STOWELL. It seems to me other questions should be brought in. If we open this discussion it will take an hour.

Professor MARTIN. I move that the resolution be laid on the table.

The CHAIRMAN. It is moved that the resolution be laid on the table.

(The motion was seconded, then carried.)

Professor BORCHARD. I do not know whether we have appointed a drafting committee for these resolutions or not, but I believe that some committee should take up all these committee resolutions and put them into a form that we would like to have printed. That is no criticism of the draftsmen of the resolutions as they are now, but the

haste with which they had to be prepared and the fact that they had to be amended makes it desirable that before they be printed some committee reexamine them and put them into good form.

Professor COLEGROVE. Wouldn't that naturally be the work of the Director of the Conference and of the committee he appoints?

Professor DICKINSON. I think the Committee on the Conference has done enough in getting the thing to this stage. I suggest that we would be glad to have a drafting committee designated.

The CHAIRMAN. Is there any motion that the Director appoint such a committee?

(It was moved and seconded that the Director appoint such a committee.)

Professor STOWELL. I do not wish to discuss it, but I should just like to make a suggestion in regard to that committee, since we shall not meet again and since it is one of the most important points upon which we are taking action today—I should like to make the suggestion, because we do not intend to leave to the committee merely a technical task of drafting these resolutions, that the Director may wish to include on such committee the members of the heads of the seven committees, and I should like to suggest it as the sense of this Conference that this drafting committee have the power to revise, edit and coordinate the resolutions and to accept the stenographic report of the proceedings. In other words, I would have them possess the plenary powers of this Conference in that respect.

The CHAIRMAN. Those who favor the motion please say Aye.

(The motion was carried.)

Professor HUDSON. Before we adjourn, I should like to have spread on the record a sentiment which I am sure everyone here shares, which will express our appreciation of the part which one individual has played in initiating the idea of resuming these conferences and in bringing the idea to such a splendid fruition as we have had in this Conference. I think we all feel very grateful to Mr. Dickinson for the time he has put into this, and may I assume that without any formal motion I am expressing the general sentiment when I say that we are all very grateful to him. (*Applause.*)

The CHAIRMAN. Is there a motion before the house that we adjourn?

(Such motion was made, seconded and carried, and, at 5.20 o'clock p.m., the Conference adjourned.)

INDEX

INDEX